

**A. 26**

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1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

1

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -

5 In Re:

Chapter 11

6

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC. et al., (Jointly Administered)

8

9 Debtors.

10 - - - - -

11 HIGHLY CONFIDENTIAL

12 DEPOSITION OF PAOLO TONUCCI

13 Friday 14 August 2009

14 At: 7:00 am

15 Taken at:

16 Jones Day

21 Tudor Street

17 London

United Kingdom

18

19 Reported by: AILSA WILLIAMS

Certified LiveNote Reporter

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4	Attorneys for Lehman Brothers, Inc.		4 PAOLO TONUCCI .. . . . . 5
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	Also Present:		
	PHILIP E. KRUSE, Alvarez & Marsal		
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3	Exhibit 155A E-mail, Veksler to various .. . . . . 159		3 Having been sworn,
4	Exhibit 156A BCI-CG00055192-55669 .. . . . . 165		4 Testified as follows
5	Exhibit 157A E-mail, Tonucci to Aronow .. . . . . 169		5 DIRECT EXAMINATION BY MR. TAMBE:
6	Exhibit 158A E-mail, Berland to various .. . . . . 171		6 MR. TAMBE: Morning, Mr. Tonucci. We
7	Exhibit 159A E-mail, Yu to various .. . . . . 173		7 met this morning. My name is Jay Tambe with Jones
8	Exhibit 160A E-mail, Tonucci to O'Meara .. . . . . 175		8 Day, representing the Lehman Brothers Holdings
9	Exhibit 161A E-mail, Fleming to Tonucci .. . . . . 177		9 Estate. I will have counsel introduce themselves
10	Exhibit 162A E-mail, Tonucci to Lyons .. . . . . 179		10 to you and then we will get started
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12	Exhibit 164A E-mail, Tonucci to Azerad .. . . . . 192		12 Jones Day.
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17	Exhibit 169A E-mail, Azerad to Tonucci .. . . . . 205		17 Creditors Committee and on the phone Erica
18	Exhibit 170A E-mail, Blackwell to various .. . . . . 207		18 Taggart, also Quinn, Emanuel, Urquhart, Oliver &
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21	Exhibit 173A E-mail, Kelly to various .. . . . . 216		21 Marsal on behalf of the LBHI Estate.
22			22 MR. LUCHT: Christopher Lucht, Simpson
23			23 Thacher & Bartlett, on behalf of the witness in
24			24 his individual capacity.
25			25 MR. HUME: Hamish Hume from Boies,

<p style="text-align: right;">Page 6</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b></p> <p>2 Schiller &amp; Flexner representing Barclays.</p> <p>3       MR. TAMBE: Erica, can you hear us?</p> <p>4       MS TAGGART: Yes, thank you.</p> <p>5       MR TAMBE: Morning, Mr. Tonucci. By</p> <p>6 whom are you currently employed?</p> <p>7       A. Barclays.</p> <p>8       <b>Q. In what capacity?</b></p> <p>9       A. I work in the treasury area</p> <p>10      <b>Q. What is your position?</b></p> <p>11      A. Head of group balance sheet</p> <p>12      <b>Q. And is that head of group balance sheet</b></p> <p>13 <b>for global operations?</b></p> <p>14      A. That is right, for global operations.</p> <p>15      <b>Q. How long have you held that position?</b></p> <p>16      A. Since February of this year</p> <p>17      <b>Q. How long have you been employed by</b></p> <p>18 <b>Barclays?</b></p> <p>19      A. Since September, 26 September 2008.</p> <p>20      <b>Q. What was your position at Barclays when</b></p> <p>21 <b>you first joined Barclays in September 2008?</b></p> <p>22      A. US treasurer for Barclays Capital.</p> <p>23      <b>Q. If you could describe for us briefly</b></p> <p>24 <b>what your duties have been since you joined</b></p> <p>25 <b>Barclays, both as US treasurer and now as global</b></p>	<p style="text-align: right;">Page 7</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b></p> <p>2 treasurer?</p> <p>3       A. I am not the global treasurer.</p> <p>4       <b>Q. Okay.</b></p> <p>5       A. Head of global balance sheet. The US</p> <p>6 treasurer role was focused on liquidity and</p> <p>7 capital management for the US Barclays Capital</p> <p>8 operations and the role with group treasury, the</p> <p>9 global balance sheet role is responsible for</p> <p>10 funding and hedging for the group's balance sheet</p> <p>11 globally.</p> <p>12      <b>Q. Before joining Barclays</b></p> <p>13 <b>in September 2008 you were employed by Lehman</b></p> <p>14 <b>Brothers, correct?</b></p> <p>15      A. That is correct</p> <p>16      <b>Q. And what Lehman Brothers entities were</b></p> <p>17 <b>you employed by?</b></p> <p>18      A. LBHI and LBI.</p> <p>19      <b>Q. Collectively for the Lehman entities</b></p> <p>20 <b>when did you first begin working for the Lehman</b></p> <p>21 <b>entities?</b></p> <p>22      A. December 1996.</p> <p>23      <b>Q. If you can give us a brief overview of</b></p> <p>24 <b>your career at Lehman, the positions you held, the</b></p> <p>25 <b>time periods that you held them for?</b></p>
<p style="text-align: right;">Page 8</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b></p> <p>2       A. Yes I joined Lehman as head of or</p> <p>3 manager for the fixed income derivatives product</p> <p>4 control team from 96 to 98.</p> <p>5       From 98 to 2000 I was manager of fixed income</p> <p>6 liquid markets product control.</p> <p>7       From 2000 to 2002 I was head of asset and</p> <p>8 liability management for Europe within the treasury area.</p> <p>9       From 2002 until 2005 I was head of assets and</p> <p>10 liability management for the group globally in New York.</p> <p>11 From 2005, or in 2005 I was international treasurer and then</p> <p>12 also through 2005 to 2000 onwards I was global treasurer.</p> <p>13      <b>Q. And in your capacity as global treasurer</b></p> <p>14 <b>for the Lehman entities, could you briefly</b></p> <p>15 <b>describe what your duties were?</b></p> <p>16      A. Responsible for funding liquidity and</p> <p>17 capital management for the group.</p> <p>18      <b>Q. And to whom did you directly report in</b></p> <p>19 <b>that capacity?</b></p> <p>20      A. To the CFO.</p> <p>21      <b>Q. In the time period, say, in 2008, who</b></p> <p>22 <b>were your direct reports at Lehman?</b></p> <p>23      A. Most recently in 2008, Robert Azerad,</p> <p>24 Dan Fleming, Janet Birney.</p> <p>25      <b>Q. The last name?</b></p>	<p style="text-align: right;">Page 9</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b></p> <p>2       A. B-I-R-N-E-Y. Julie Boyle, B-O-Y-L-E</p> <p>3 Jackie F-R-O-M-M-E-R and Kevin Thatcher.</p> <p>4       <b>Q. Mr. Azerad, what was his position and</b></p> <p>5 <b>role at Lehman?</b></p> <p>6       A. He was responsible for liquidity</p> <p>7 management.</p> <p>8       <b>Q. And Mr. Fleming?</b></p> <p>9       A. For cash management</p> <p>10      <b>Q. And when you use the phrase "liquidity</b></p> <p>11 <b>management", what do you mean by that?</b></p> <p>12      A. I mean for the tracking, reporting, and</p> <p>13 execution of liquidity oversight.</p> <p>14      <b>Q. Does liquidity management include</b></p> <p>15 <b>arranging for repurchase agreements and other</b></p> <p>16 <b>forms of financing for the Lehman entities?</b></p> <p>17      A. Generally not.</p> <p>18      <b>Q. Who within Lehman would have been</b></p> <p>19 <b>responsible for repurchase agreements and</b></p> <p>20 <b>liquidity financing of that nature?</b></p> <p>21      A. Secured financing was managed within the</p> <p>22 prime brokerage team and overseen by John Coghlan.</p> <p>23      <b>Q. And John was not one of your direct</b></p> <p>24 <b>reports, is that correct?</b></p> <p>25      A. He was not, no.</p>

<p style="text-align: right;">Page 10</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        10</p> <p>2        Q. Was he in the line of reporting in your      3 department?</p> <p>4        A. No, he was not, he was within the prime      5 brokerage business</p> <p>6        Q. I guess I am trying to understand this      7 better. Repurchase agreements and financing      8 secured by repurchase agreements is part of      9 liquidity of the firm, correct?</p> <p>10      A. It is.</p> <p>11      Q. And your responsibility included      12 liquidity management, correct?</p> <p>13      A. It did.</p> <p>14      Q. Could you describe for me how your role      15 and Mr. Coghlan's role were related to each other?</p> <p>16      A. Certainly. Any activity that was      17 performed by the secured funding team would affect      18 our liquidity and would be a component of the      19 resulting liquidity. We would therefore work      20 closely with that team to understand their      21 activities but, you know, to collectively I guess      22 ensure that we were executing the right series of      23 transactions, but the actual activity was executed      24 entirely by John's team, and there was no      25 reporting line from John to me</p>	<p style="text-align: right;">Page 11</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        11</p> <p>2        Q. As overseeing liquidity management at      3 Lehman, you were responsible for figuring out how      4 much cash Lehman needed on a daily basis just to      5 run operations, correct?</p> <p>6        A. How much cash we needed, how much cash      7 we had.</p> <p>8        Q. Once you figured out how much cash you      9 needed, how much cash you had, you would have to      10 tell the secured funding team how much cash they      11 needed to raise overnight, correct?</p> <p>12      A. The execution of transactions was within      13 that team. We would within Dan Fleming's area      14 advise them of the broad requirements, because we      15 were tracking the cash in the cash accounts, and      16 had the most accurate within the group forecasts      17 of what the cash position was, so there was that      18 interaction.</p> <p>19      Q. If I am --</p> <p>20      A. But to be clear we were not directing      21 them to execute explicit transactions. We were      22 advising them of what the overall cash position      23 was and what we saw as the collateral position.</p> <p>24      Q. So you told them what the needs were,      25 they figured out how to get the cash, right?</p>
<p style="text-align: right;">Page 12</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        12</p> <p>2        A. Yes.</p> <p>3        Q. Was that the case during the week      4 of September 15 as well. Were those the roles      5 played by yourself and Mr. Coghlan during the week      6 of September 15, 2008?</p> <p>7        A. In the week leading up to?</p> <p>8        Q. No, the week of September 15, starting      9 Monday 15 September?</p> <p>10      A. The position was quite different at that      11 point. We were certainly trying to -- we were      12 certainly trying to execute the same function,      13 meaning that we were trying to calculate and      14 advise what the cash position was and what the      15 financing requirements were. However, the access      16 to information and our ability to predict the      17 position was impaired by both difficulties with      18 the change in the group that had happened, because      19 obviously all of the intercompanies, the      20 intercompany activity was severely impaired or      21 completely ceased, and the difficulties with      22 getting information from clearers and from the      23 exchanges, but we were trying to perform that same      24 function of forecasting and advising what the cash      25 position was and the collateral position.</p>	<p style="text-align: right;">Page 13</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        13</p> <p>2        Q. And you, Mr. Tonucci, you were much more      3 hands-on involved in the mechanics of repurchase      4 agreements that week, correct?</p> <p>5        A. I would not say so, actually. I don't      6 recall -- I don't recall anything other than      7 really the oversight of the sort of final      8 positions, the final trades that were booked. So      9 I wouldn't say that there was a -- I wouldn't say      10 that there was a significant change in my level of      11 involvement.</p> <p>12      Q. We have a window into sort of your      13 involvement that week through e-mails and      14 testimony from other people. Would you say your      15 involvement with repos that week was similar to      16 your investment with repos in prior weeks and      17 months?</p> <p>18      A. I would say probably a little bit more      19 If you look at the volume of repos that week and      20 the volume of repo counterparties, there were very      21 few. There were repos with the Fed and with      22 Barclays and probably a couple of other      23 counterparties. So there were very few repos      24 being executed. So consequently I think, you      25 know, the level of oversight of those particular</p>

<p style="text-align: right;">Page 14</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        14</p> <p>2 repos was greater than would typically have been      3 the case for a much larger set of repos.</p> <p>4        <b>Q. And your personal involvement in those</b>      5 <b>particular repos was much greater than your</b>      6 <b>involvement had been on prior repos. Is that</b>      7 <b>correct?</b></p> <p>8        MR. HUME. Object to the form of the      9 question and to the lack of foundation. I think      10 if you have e-mails you should show him to      11 characterize what you are asking.</p> <p>12        MR. TAMBE: Do you have my question in      13 mind?</p> <p>14        A. I am not sure, this point about much      15 more involved, it is difficult for me to respond      16 to. I would say that there was slightly more      17 involvement than there would have been in a normal      18 day's repo activity but I would not say that I was      19 much more involved, no.</p> <p>20        <b>Q. Let's see what you were involved in</b>      21 <b>during that week broadly. I am going to start in</b>      22 <b>this period beginning September 12, Friday</b>      23 <b>through September 22, the Monday. Start at the</b>      24 <b>beginning, September 12, and just generally tell</b>      25 <b>me what your involvement was in the events of that</b></p>	<p style="text-align: right;">Page 15</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        15</p> <p>2 weekend, in terms of possibly doing transactions      3 with buyers, the filing of the bankruptcy, your      4 role in the sale of assets to Barclays and finally      5 the closing of the transaction on September 22,      6 and we will take it in pieces but I want to get an      7 overview of your recollection of your involvement      8 during that ten day period. Okay?</p> <p>9        A. Okay.</p> <p>10        <b>Q. Let's start with the weekend before the</b>      11 <b>filing of the bankruptcy. What were you involved</b>      12 <b>in starting on Friday, September 12?</b></p> <p>13        A. Friday was a trading day and so the      14 range of activity included overseeing our      15 financing position that day and our financing --      16 our liquidity forecasting, which I would      17 characterize as regular daily activity, regular      18 daily oversight.</p> <p>19        There was due diligence, specifically      20 with Bank of America for much of that day, and      21 there was towards the end of the day discussion      22 with Barclays directly and with the due diligence      23 teams at one other potential buyer.</p> <p>24        <b>Q. What other potential buyer?</b></p> <p>25        A. Nomura, but I didn't speak to them</p>
<p style="text-align: right;">Page 16</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        16</p> <p>2 directly.</p> <p>3        <b>Q. And I gather from your answer then you</b>      4 <b>were speaking directly with the due diligence</b>      5 <b>teams from Bank of America?</b></p> <p>6        A. Yes.</p> <p>7        <b>Q. And you had direct discussions with</b>      8 <b>Barclays towards the end of the day on the 12th?</b></p> <p>9        A. Yes, in the capacity of due diligence,      10 not negotiations</p> <p>11        <b>Q. And when you mean in capacity of due</b>      12 <b>diligence you were providing information?</b></p> <p>13        A. That is right.</p> <p>14        <b>Q. In terms of liquidity management on the</b>      15 <b>12th, were there any particular constraints on</b>      16 <b>Lehman or challenges for Lehman in terms of</b>      17 <b>managing its liquidity for operations on the 12th?</b></p> <p>18        A. Yes.</p> <p>19        <b>Q. Can you describe what those constraints</b>      20 <b>were?</b></p> <p>21        A. There was a large cash request from      22 JP Morgan, which was for \$5 billion in cash, and      23 that was a significant challenge. There were      24 changes being made to secured funding haircuts and      25 collateral agreements and there were margin</p>	<p style="text-align: right;">Page 17</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        17</p> <p>2 requests from a variety of clients. So overall      3 I would characterize it as extremely busy and      4 complicated</p> <p>5        <b>Q. You used a phrase, "There were changes</b>      6 <b>in secured funding haircuts", is that right? I</b>      7 <b>want to understand what you mean by "haircuts"?</b></p> <p>8        A. The difference between the market value      9 and the cash received is known as the haircut in      10 a secured funding arrangement, the market value of      11 the securities I should say.</p> <p>12        <b>Q. So is it fair to say that the haircut</b>      13 <b>allows you to determine how much cash you can</b>      14 <b>borrow against a given market value of securities?</b></p> <p>15        A. That is correct.</p> <p>16        <b>Q. And what were the changes in haircuts on</b>      17 <b>the 12th, generally?</b></p> <p>18        A. Generally, they were that the haircuts      19 were widening, but I don't have any specifics. I      20 don't recall any specifics.</p> <p>21        <b>Q. We go into the weekend of 13 and 14</b>      22 <b>September. Describe for me what you were --</b>      23 <b>describe for me what your duties were that weekend</b>      24 <b>and what you were doing that weekend?</b></p> <p>25        A. Due diligence continued Discussion</p>

<p style="text-align: right;">Page 18</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        18</p> <p>2 with the internal team on potential outcomes and      3 the management of potential purchases. Some      4 discussion with external lawyers acting for the      5 Board in terms of fairness opinions.</p> <p>6        <b>Q. Generally, when you are talking about</b>      7 <b>interactions you had with external counsel for</b>      8 <b>Lehman Brothers during that time period, you can</b>      9 <b>identify that you had those contacts but I would</b>      10 <b>urge you not to disclose the substance of your</b>      11 <b>conversations with external counsel for Lehman.</b>      12 <b>Understood?</b></p> <p>13        A. Yes.</p> <p>14        <b>Q. I mean when my question is requesting an</b>      15 <b>answer of that type, just alert me if you think</b>      16 <b>you are going to have to tell me about</b>      17 <b>conversations with external counsel. Fair?</b></p> <p>18        A. Yes.</p> <p>19        <b>Q. In terms of who the potential purchasers</b>      20 <b>being discussed were over the weekend</b>      21 <b>of September 13 and 14, you had BFA, correct?</b></p> <p>22        A. Correct.</p> <p>23        <b>Q. Barclays was still a potential</b>      24 <b>purchaser?</b></p> <p>25        A. Barclays was the most likely purchaser.</p>	<p style="text-align: right;">Page 19</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        19</p> <p>2        <b>Q. Nomura, was that still a potential</b>      3 <b>purchaser?</b></p> <p>4        A. Not that I was aware of</p> <p>5        <b>Q. Other than those three were any other</b>      6 <b>potential purchasers discussed that weekend?</b></p> <p>7        A. Not that I am aware of.</p> <p>8        <b>Q. When you say you had discussions with</b>      9 <b>the internal team, who was the internal team that</b>      10 <b>you were having discussions with?</b></p> <p>11        A. Largely with Ian Lowitt but with other      12 members of Lehman's senior management.</p> <p>13        <b>Q. Do you recall any of the other members</b>      14 <b>of senior management that you had discussions with</b>      15 <b>that weekend?</b></p> <p>16        A. Bart McDade, Tom Russo, Stephen      17 Berkenfeld, Alex Kirk</p> <p>18        <b>Q. Any others?</b></p> <p>19        A. I can't recall.</p> <p>20        <b>Q. When did you first learn that Lehman</b>      21 <b>Brothers Holdings Inc was contemplating</b>      22 <b>a bankruptcy filing?</b></p> <p>23        A. I believe first contemplated on      24 Saturday.</p> <p>25        <b>Q. Were you asked to perform any tasks</b></p>
<p style="text-align: right;">Page 20</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        20</p> <p>2 specifically in connection with contemplated      3 filing of the bankruptcy?</p> <p>4        A. Only one comes to mind, which was to      5 make a payment to Weil Gotshal.</p> <p>6        <b>Q. We go ahead with the bankruptcy filing</b>      7 <b>on September 15. Describe for me the kinds of</b>      8 <b>things you were doing on September 15. What was</b>      9 <b>your day like?</b></p> <p>10        A. So the filing happened in the early      11 hours of the morning and there was great confusion      12 about the consequences of that, so much of the day      13 was spent fielding telephone calls from various      14 parts of the organization within Lehman, some from      15 external counterparties seeking clarification as      16 to the position, which entities may have filed and      17 the position of the remaining entities, and trying      18 to oversee the position and funding for LBI, the      19 US broker dealer.</p> <p>20        <b>Q. Describe for me what actions you took</b>      21 <b>and conversations you had in connection with the</b>      22 <b>funding for LBI, the US broker dealer on the 15th?</b></p> <p>23        A. We had been instructed that the Fed      24 would be providing secured financing and that      25 other secured financing arrangements would be</p>	<p style="text-align: right;">Page 21</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        21</p> <p>2 maturing, so the discussion to the extent that      3 there was any was really just about executing that      4 transaction</p> <p>5        <b>Q. When you say "that transaction", the Fed</b>      6 <b>transaction?</b></p> <p>7        A. With the Fed, yes</p> <p>8        <b>Q. Were you involved in executing the</b>      9 <b>transaction with the Fed?</b></p> <p>10        A. Not executing it, no</p> <p>11        <b>Q. Were you involved with negotiating the</b>      12 <b>transaction with the Fed?</b></p> <p>13        A. No.</p> <p>14        <b>Q. What was your involvement with the Fed</b>      15 <b>transaction?</b></p> <p>16        A. Only overseeing the collateral, the      17 collateral allocation and the cash received      18 afterwards.</p> <p>19        <b>Q. When you say "overseeing collateral</b>      20 <b>allocation", what was your role in overseeing?</b>      21 <b>What specifically did you do to oversee collateral</b>      22 <b>allocation on the Fed repo?</b></p> <p>23        A. I reviewed the collateral that had been      24 allocated and the cash that had been received      25 against that collateral. My role was largely</p>

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1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI	22      HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2        analytical and much of the liquidity oversight is	2        A. I have already explained that, to
3        an analytical function. It is explaining the	3        understand the financial position of the entity.
4        changes in the liquidity position and explaining	4        It is obviously pertinent to the financial
5        the financing arrangements in the context of the	5        position of the entity to understand the
6        overall financial picture and balance sheet of the	6        collateral that has been transferred and the value
7        entity. So I don't know -- my group did not book	7        received for that.
8        the transactions or the allocations, but clearly	8        Q. So your review includes what specific
9        it was important to understand the substance of	9        pieces of collateral that have been allocated, is
10      the transaction and detail of the transaction that	10      that right?
11      was executed to get a clear picture of the	11      A. That is right.
12      financial position of the entity.	12      Q. And you also did a review of what values
13      Q. Who booked the transaction?	13      had been ascribed to that collateral?
14      A. The secured funding area.	14      A. That is right
15      Q. Mr. Coghlan's group?	15      Q. Let's talk about the values ascribed to
16      A. Yes.	16      the collateral allocated. Who determines the
17      Q. Did you have conversations with	17      values of the collateral, the market value of the
18      Mr. Coghlan about the Fed funding on the 15th?	18      collateral that is being allocated for financing?
19      A. I don't recall.	19      A. The tri-party provider in the case of
20      Q. You said you reviewed the collateral.	20      a tri-party repo transaction.
21      What were you reviewing the collateral allocated	21      Q. And was the Fed funding a tri-party
22      for. Let me restate that. You stated earlier you	22      funding?
23      reviewed the collateral allocated. For what	23      A. It was.
24      purpose were you reviewing the collateral	24      Q. Who was the third party?
25      allocated?	25      A. JP Morgan and Chase.
Page 24	Page 25
1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI	24      HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2        Q. So would it be correct to say that	2        MR. HUME: Object to the form of the
3        JP Morgan and Chase would determine the values for	3        question. Any time during the week?
4        the collateral allocated by Lehman for the Fed	4        MR. TAMBE: Yes.
5        funding on September 15, is that correct?	5        A. I don't recall.
6        A. Yes.	6        Q. Generally, as a matter of mechanics,
7        Q. And the applicable haircuts would then	7        when the tri-party provider had done a valuation
8        be applied to the JP Morgan valuation, is that	8        of collateral and that valuation was significantly
9        correct?	9        lower than the Lehman valuation, that would affect
10      A. That is correct.	10      how much money you could borrow, correct?
11      Q. Now, Lehman would have its own values	11      A. That is correct
12      for the collateral that was allocated to this	12      Q. So you would probably disagree with the
13      funding, correct?	13      valuation done by the third tri-party provider,
14      A. That is correct	14      correct?
15      Q. Was part of your review to see how the	15      MR. HUME: Object to the form of the
16      JP Morgan values differed from the Lehman values	16      question.
17      for the same collateral?	17      A. No.
18      A. It was.	18      Q. You had no ability to disagree?
19      Q. Do you recall generally if the JP Morgan	19      A. We had no ability to disagree, nor do we
20      values were higher, lower or the same?	20      have an ability to negotiate the haircuts provided
21      A. I don't recall.	21      by the Fed or by other lenders.
22      Q. Do you recall there being any	22      Q. I am not talking about the haircut, I am
23      significant discrepancy at any time with the	23      talking about the market value of the collateral
24      JP Morgan prices for the collateral during that	24      before you apply the haircuts?
25      week, September 15?	25      A. We had no ability to object.

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	26	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	I certainly did not	2	16th were you involved in any negotiations with
3	<b>Q. Do you recall what the term was of the</b>	3	<b>Barclays about the purchase by Barclays of</b>
4	<b>Fed funding that was put in place on 15 September?</b>	4	<b>Lehman's North American assets?</b>
5	A. I believe it was overnight	5	A. I was not.
6	<b>Q. Moving to the 16th, was that facility</b>	6	<b>Q. But you were aware those negotiations</b>
7	<b>rolled over on the 16th?</b>	7	<b>were taking place, correct?</b>
8	A. The majority of the facility was rolled	8	A. I was.
9	over. Barclays provided some financing as well so	9	<b>Q. Did you provide any due diligence</b>
10	the amount of the facility with the Fed reduced.	10	<b>information in that time period?</b>
11	<b>Q. Before we get to the 16th, on the 15th,</b>	11	A. I don't believe so.
12	<b>other than dealing with the Fed funding, were you</b>	12	<b>Q. What was your understanding of what</b>
13	<b>also involved in any discussions about a possible</b>	13	<b>transaction was being contemplated on the 15th</b>
14	<b>acquisition of the North American assets by</b>	14	<b>over into the 16th between Lehman and Barclays?</b>
15	<b>Barclays?</b>	15	A. I understood that it was the purchase of
16	A. I was not, no.	16	the business and assets, some selection of assets
17	<b>Q. Were you aware that Barclays had</b>	17	of the North American Lehman Brothers business.
18	<b>returned to Lehman to engage Lehman in discussions</b>	18	<b>Q. And either on the 15th or 16th did you</b>
19	<b>about that?</b>	19	<b>have any understanding of what the economics of</b>
20	A. I was aware, yes.	20	<b>that deal were?</b>
21	<b>Q. How did you become aware of that?</b>	21	MR. HUME. Objection, lacks foundation.
22	A. I can't remember who advised me but	22	A. Not really. I mean, I was aware of the
23	someone, one of the senior members of the firm had	23	balance sheet that was being agreed at a very
24	advised me that that was the case.	24	summary level and, as I am sure you know, Martin
25	<b>Q. On the 15th through the morning of the</b>	25	Kelly sent me a note advising me of some of the
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	28	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	details, so I had a very general sense of the	2	<b>Q. That is an e-mail from Martin Kelly, you</b>
3	substance of the transaction, but to say that	3	<b>are cc'd on that e-mail at the bottom. Do you see</b>
4	I understood the economics would be, you know,	4	<b>that?</b>
5	would not be accurate.	5	A. Yes
6	<b>Q. The Martin Kelly e-mail that you are</b>	6	<b>Q. There is a reference in there to a</b>
7	<b>referring to, is that the one that talks about the</b>	7	<b>"\$5 billion all in economic loss versus our</b>
8	<b>5 billion-dollar loss?</b>	8	<b>marks". Do you see that?</b>
9	A. That is right	9	A. I do
10	<b>Q. Let's take a look at that e-mail. It is</b>	10	<b>Q. What was your understanding of that</b>
11	<b>136A.</b>	11	<b>phrase? What did that mean?</b>
12	<b>(Exhibit 136A marked for identification)</b>	12	A. I read that to mean that there would be
13	MR. HUME: Is that a new number?	13	a discount to the marks at that time on the
14	MR. TAMBE: Yes.	14	assets.
15	MR. HUME: Has this document not been	15	<b>Q. And this notion of a discount on the</b>
16	made an exhibit yet?	16	<b>marks on the assets, was that a feature of the</b>
17	MR. TAMBE: I just do not know if it has	17	<b>transaction that ultimately persisted with the</b>
18	been. Wherever possible we are trying to avoid	18	<b>transaction as it unfolded?</b>
19	re-marking exhibits. My guess is this one has	19	MR. HUME. Objection, calls for
20	been. We could not figure out what the number	20	speculation and lacks foundation
21	was.	21	A. Can you repeat?
22	Mr. Tonucci, I have placed before you	22	<b>Q. Let me rephrase. You understood the</b>
23	a document marked Exhibit 136A. Is that the	23	<b>5 billion dollars all in economic loss versus our</b>
24	e-mail that you were referring to?	24	<b>marks to be a reference to a discount off the</b>
25	A. That is correct.	25	<b>marks, correct?</b>

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 30	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 31
2	A. Yes.	early September 16, correct? The deal that is
3	Q. The deal that was ultimately done and	contemplated on the 16th changes in many ways by
4	closed on September 22, that too included	the 22nd, correct?
5	a discount off of Lehman's marks, correct?	A. Yes.
6	A. That is correct	<b>Q. The amount of the discount in this</b>
7	Q. Okay, and the amount of that discount	e-mail, the \$5 billion you are telling me was
8	off of Lehman's marks was about \$5 billion, is	about the discount when all was said and done at
9	that right?	the end of the day, is that correct?
10	MR. HUME: Objection, lacks foundation.	A. That is correct
11	A. It is uncertain, because obviously there	<b>Q. Is it your understanding that the</b>
12	were a lot of valuation movements and so	<b>\$5 billion amount was the agreed upon discount for</b>
13	I couldn't say with certainty, but certainly what	<b>the transaction?</b>
14	I can say is versus the valuations that I recall	MR. HUME: Objection, the witness has
15	seeing from our analysis it was about that number.	said he did not participate in the negotiations
16	<b>Q. About \$5 billion?</b>	and so the question lacks foundation.
17	A. About \$5 billion	A. Only as I said from what I read here. I
18	<b>Q. Was it your understanding that about</b>	didn't have any further discussions about the
19	<b>a \$5 billion discount was a negotiated amount of</b>	discount that I can recall.
20	<b>discount?</b>	<b>Q. Do you have an understanding of how the</b>
21	MR. HUME: Objection, lacks foundation.	<b>discount was effected, how was the discount made</b>
22	A. Only insofar as what I can read in this	<b>available to Barclays?</b>
23	e-mail.	MR. HUME: Objection, vague and
24	<b>Q. Here is what I am getting at. This</b>	ambiguous.
25	<b>e-mail, 136A, is sent to you on</b>	A. Do you want to reword that?
	Page 32	Page 33
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 32	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 33
2	<b>Q. Do you have trouble with the question?</b>	foundation.
3	A. Not sure what you mean	MR. TAMBE: Do you remember my question?
4	<b>Q. How did Barclays get the</b>	Probably not. Do you want it read back?
5	<b>5 billion-dollar discount?</b>	A. Yes, please.
6	A. Right. I think what was contemplated in	(Read back)
7	the negotiation, and what was executed in terms of	A. Yes, I would say that was the way in
8	the settlement probably differed slightly, you	which the transaction was settled, so that is
9	know, and involved over the week the settlement of	fair
10	the transaction, meaning the actual transfer of	<b>Q. Would it also be fair to say, therefore,</b>
11	securities and cash was through the repo	<b>that the discount was embedded in the haircut on</b>
12	agreements, and essentially the termination of	<b>the repo transaction?</b>
13	those repo agreements.	MR. HUME: Objection, what discount?
14	<b>Q. Was the discount given to Barclays by</b>	MR. TAMBE: The 5 billion-dollar
15	<b>defaulting on the repo?</b>	discount.
16	MR. HUME: Objection. You are asking	MR. HUME: What 5 billion-dollar
17	the witness very general questions about	discount? You have not established or laid any
18	a complicated transaction without walking him	record of foundation
19	through any of the details of that transaction. I	MR. TAMBE: Hamish, make objection to
20	think the line of questioning lacks foundation.	form, move on. Don't make speaking objections.
21	MR. TAMBE: You have an objection to	MR. HUME: The objection is this is
22	form, right, Hamish? So noted. Answer the	a deliberately ambiguous and misleading line of
23	question, please.	questioning
24	MR. HUME: I think the line of	MR. TAMBE: Do you have my question in
25	questioning is calling for speculation and lacks	mind?

<p style="text-align: right;">Page 34</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        34</p> <p>2        A. Could you repeat it please or read it</p> <p>3        back</p> <p>4                (Read back)</p> <p>5        A. In a repo transaction there is haircut,</p> <p>6        a difference between the market value and the cash</p> <p>7        value received. You could view that as</p> <p>8        a discount. I think in this case it is fair to</p> <p>9        say that that was the settlement mechanics and</p> <p>10       therefore the way that the difference between</p> <p>11       market value and cash paid was accomplished.</p> <p>12       There was in that sense a discount.</p> <p>13       <b>Q. So I understand your last answer, there</b></p> <p>14       <b>was a 5 billion-dollar differential, roughly,</b></p> <p>15       <b>between the cash paid by Barclays and the market</b></p> <p>16       <b>value of the collateral they received, correct?</b></p> <p>17       A. That was when I looked at our analysis,</p> <p>18       that was about the size of the number.</p> <p>19       <b>Q. Let's go back to the week of the 16th.</b></p> <p>20       <b>You get the e-mail from Martin Kelly telling you</b></p> <p>21       <b>about at least an agreement in principle, correct?</b></p> <p>22       A. That is correct.</p> <p>23       <b>Q. Let's move forward from there. You have</b></p> <p>24       <b>got on the 16th a Fed funding facility in place,</b></p> <p>25       <b>correct. Right?</b></p>	<p style="text-align: right;">Page 35</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        35</p> <p>2        A. That is correct.</p> <p>3        <b>Q. And you have got a repo from Barclays as</b></p> <p>4        <b>well, correct?</b></p> <p>5        A. Yes</p> <p>6        <b>Q. And there was a pre-existing master</b></p> <p>7        <b>repurchase agreement with Barclays, correct?</b></p> <p>8        A. I believe so.</p> <p>9        <b>Q. That was amended on Monday September 15?</b></p> <p>10       A. I believe so.</p> <p>11       <b>Q. Were you involved in the amendment to</b></p> <p>12       <b>that?</b></p> <p>13       A. I was not.</p> <p>14       <b>Q. Who was?</b></p> <p>15       A. I don't know.</p> <p>16       <b>Q. Do you have an understanding of what</b></p> <p>17       <b>the terms were of the Barclays -- the amended</b></p> <p>18       <b>Barclays repurchase agreement?</b></p> <p>19       A. I don't really recall, no</p> <p>20       <b>Q. Am I right to believe that there are</b></p> <p>21       <b>haircut schedules associated with repo agreements?</b></p> <p>22       A. Correct.</p> <p>23       <b>Q. There was such a haircut schedule in</b></p> <p>24       <b>connection with the Fed repo, correct?</b></p> <p>25       A. There was.</p>
<p style="text-align: right;">Page 36</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        36</p> <p>2        <b>Q. And there was a haircut schedule on the</b></p> <p>3        <b>Barclays repo, correct?</b></p> <p>4        A. I believe so, yes.</p> <p>5        <b>Q. Do you recall there being any</b></p> <p>6        <b>significant difference between the haircuts on the</b></p> <p>7        <b>Fed repo and the haircuts on the Barclays repo?</b></p> <p>8        MR. HUME: Objection.</p> <p>9        A. There were certainly differences, I</p> <p>10       can't recall how significant.</p> <p>11       <b>Q. Do you remember if there were particular</b></p> <p>12       <b>asset classes in which there were differences?</b></p> <p>13       A. I don't, no.</p> <p>14       <b>Q. The Fed repo was an overnight repo,</b></p> <p>15       <b>right?</b></p> <p>16       A. Correct.</p> <p>17       <b>Q. So it rolled over from the 15th to the</b></p> <p>18       <b>16th?</b></p> <p>19       A. Correct.</p> <p>20       <b>Q. And rolled over again from the 16th to</b></p> <p>21       <b>the 17th?</b></p> <p>22       A. Not the same size, no.</p> <p>23       <b>Q. Tell me briefly what the changes were,</b></p> <p>24       <b>if any, in the size of the Fed repo from Monday to</b></p> <p>25       <b>Tuesday to later in the week?</b></p>	<p style="text-align: right;">Page 37</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        37</p> <p>2        A. I can't recall the exact details. I</p> <p>3        recall that the Barclays repo on the -- again, I</p> <p>4        am not certain about this but the Barclays repo on</p> <p>5        the 16th, I believe, was for \$5 billion. On the</p> <p>6        17th I believe it was for \$8 billion and then on</p> <p>7        the Thursday there was obviously a much bigger</p> <p>8        transaction and so that changed the Fed repo,</p> <p>9        which became zero.</p> <p>10       <b>Q. Let's talk about that bigger transaction</b></p> <p>11       <b>on Thursday, okay. Describe for me how the Fed</b></p> <p>12       <b>repo went to zero and what happened with the</b></p> <p>13       <b>Barclays repo on Thursday?</b></p> <p>14       A. It is difficult for me to talk about the</p> <p>15       mechanics because I am not that close to the</p> <p>16       operational mechanics of the repo being unwound,</p> <p>17       but my understanding was that the repo unwound on</p> <p>18       the Thursday morning, which would be typical in</p> <p>19       a tri-party repo, that an overnight repo would</p> <p>20       unwind, you would return the collateral and the</p> <p>21       cash and the transactions would then settle with</p> <p>22       that collateral that was released, and at the end</p> <p>23       of the day a new financing transaction would be</p> <p>24       settled.</p> <p>25       In this instance there was complexity because</p>

Page 38		Page 39	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	38	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>
2	JP Morgan was the tri-party agent for Lehman and had been		<b>\$50 billion in collateral against that financing?</b>
3	the tri-party agent in the transaction with the Fed. BONY		3. A. That sounds right.
4	was the tri-party agent for Barclays and so there was a need		4. <b>Q. And the big transaction that you</b>
5	to transfer collateral from JP Morgan to Bank of New York		5. <b>described on Thursday effectively had Barclays</b>
6	tri-party system, and I am not sure about the mechanics		6. <b>coming in and putting in \$45 billion to pay off</b>
7	involved in that transfer but it was clearly a more		7. <b>the Fed repo, correct?</b>
8	complicated transaction than if the financing had just been		8. A. I understood that they were going to be
9	through the JP Morgan tri-party system.		9. putting in 45, that it was going to be
10	<b>Q. Is it your understanding that on</b>		10. a 45 billion-dollar transaction, yes.
11	<b>Thursday, in this bigger transaction on Thursday,</b>		11. <b>Q. And all the collateral that was being</b>
12	<b>Barclays effectively replaced the Fed and the Fed</b>		12. <b>held by the Fed was then going to be transferred</b>
13	<b>funding transaction?</b>		13. <b>to Barclays, correct?</b>
14	A. I was not involved in the discussions		14. MR. HUME: Objection, asked and
15	with Barclays or with the Fed on the removal or		15. answered. He has already explained.
16	replacement of the Fed in that transaction, so I		16. A. To be honest, I was not close enough to
17	can't really talk to the specifics, but my		17. the actual transaction that was being booked to
18	understanding was that the Fed transaction was		18. know exactly where all the collateral was going to
19	going to mature on the Thursday and they were not		19. end up, nor was I close enough to any agreements
20	really providing any financing subsequently.		20. with Barclays or with the Fed as to where all of
21	<b>Q. Wednesday night into Thursday, do you</b>		21. the collateral was going to end up.
22	<b>recall the size of the Fed funding being</b>		22. <b>Q. So effectively on Thursday the Fed</b>
23	<b>approximately \$45 billion?</b>		23. <b>fundng goes down to zero, correct?</b>
24	A. Yes, that sounds about right.		24. A. That is correct.
25	<b>Q. And the Fed was holding approximately</b>		25. <b>Q. And they exit the financing picture at</b>
Page 40		Page 41	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	40	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>
2	<b>that point?</b>		<b>familiar with that documentation?</b>
3	A. That is correct.		3. A. With parts of it.
4	<b>Q. And what you have left is the Barclays</b>		4. <b>Q. What do you understand the operative</b>
5	<b>repo, correct?</b>		5. <b>legal documentation to be for that transaction?</b>
6	A. That is correct.		6. MR. HUME I am going to object again.
7	<b>Q. Describe for me what happens with the</b>		7. You are asking -- he said he is not a negotiator.
8	<b>Barclays repo over the next few business dates?</b>		8. You have shown him their documents and you keep
9	<b>We are now into Thursday on to Friday the 19th.</b>		9. asking him to speculate about the entire
10	MR. HUME Again, objection to the form		10. transaction. I will counsel the witness not to
11	of the question and the lack of foundation.		11. speculate.
12	A. That transaction happened on Thursday.		12. A. I am not a lawyer but I believe that the
13	That was essentially the last of that transaction		13. asset purchase agreement is the document that you
14	in the way that I think about it. It was executed		14. are referring to.
15	on Thursday night and settled Thursday night into		15. <b>Q. Is that a document that you -- when is</b>
16	Friday morning and that was the end of that		16. <b>the first time you saw the asset purchase</b>
17	transaction. After that it was just a matter of		17. <b>agreement?</b>
18	that transaction terminating and the collateral		18. A. Not until a long time after the
19	being rebooked as a purchase by Barclays and as		19. transaction closed
20	a sale by Lehman.		20. <b>Q. Is it fair to say during the week of the</b>
21	<b>Q. Do you recall if the Barclays repo was</b>		21. <b>15th to the 22nd you did not see the asset</b>
22	<b>terminated on Friday?</b>		22. <b>purchase agreement?</b>
23	A. I don't.		23. A. I didn't, no.
24	<b>Q. The legal documentation for the</b>		24. <b>Q. Did you see something called</b>
25	<b>Lehman/Barclays transaction, are you generally</b>		25. <b>a clarification letter?</b>

<p style="text-align: right;">Page 42</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>42</b></p> <p>2       A Not until long after the close.</p> <p>3       <b>Q. You know what I mean by "clarification</b></p> <p>4       <b>letter"?</b></p> <p>5       A I know what you mean when you say the</p> <p>6       clarification letter in relation to this</p> <p>7       transaction, yes.</p> <p>8       <b>Q. I am sorry, I cut you off. What is your</b></p> <p>9       <b>understanding of the clarification letter?</b></p> <p>10      MR. HUME. Objection. Same objection</p> <p>11      You are asking someone who was not a negotiator,</p> <p>12      who is not a lawyer to speculate as to the meaning</p> <p>13      of these documents that you are not even showing</p> <p>14      him.</p> <p>15      A. Only that it was a clarification to the</p> <p>16      purchase agreement</p> <p>17      <b>Q. Do you know when it was negotiated?</b></p> <p>18      A. I believe on the -- prior to closing on</p> <p>19      the -- I don't remember. Actually, I don't know</p> <p>20      when it was negotiated</p> <p>21      <b>Q. Did anyone ever tell you why</b></p> <p>22      <b>a clarification letter was needed?</b></p> <p>23      A. No.</p> <p>24      <b>Q. Did you review any drafts of</b></p> <p>25      <b>a clarification letter?</b></p>	<p style="text-align: right;">Page 43</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>43</b></p> <p>2       MR. HUME: Objection, asked and</p> <p>3       answered.</p> <p>4       A. No.</p> <p>5       <b>Q. During the week of September 15, so from</b></p> <p>6       <b>the 15th through the 19th, were you aware of any</b></p> <p>7       <b>mark downs on the Lehman assets on Lehman's own</b></p> <p>8       <b>books?</b></p> <p>9       MR. HUME: Objection, vague and</p> <p>10      ambiguous.</p> <p>11      A. There was a great deal of volatility in</p> <p>12      prices over that week so I can't really sort of</p> <p>13      answer whether there were any specific mark downs.</p> <p>14      I was not part of the process of re-marking those</p> <p>15      books or re-marking the assets, but there was</p> <p>16      a great deal of price volatility and so I would</p> <p>17      certainly expect that there would be asset price</p> <p>18      movements and I would expect most of them to be</p> <p>19      down.</p> <p>20      <b>Q. Were you aware of a general mark down</b></p> <p>21      <b>process in connection with Lehman's assets during</b></p> <p>22      <b>that week?</b></p> <p>23      A. No</p> <p>24      <b>Q. Going back to Thursday and the closing</b></p> <p>25      <b>out of the Fed facility, and then the Barclays</b></p>
<p style="text-align: right;">Page 44</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>44</b></p> <p>2       repo, you said the Bank of New York was</p> <p>3       a tri-party provider for the Barclays repo, is</p> <p>4       that right?</p> <p>5       A. That is right.</p> <p>6       <b>Q. So they would have played a similar role</b></p> <p>7       <b>to the role played by JP Morgan on the Fed</b></p> <p>8       <b>facility, correct?</b></p> <p>9       A. That is correct.</p> <p>10      <b>Q. And therefore Bank of New York would</b></p> <p>11      <b>have had prepared valuations of the collateral</b></p> <p>12      <b>that was being posted on the Barclays repo,</b></p> <p>13      <b>correct?</b></p> <p>14      A. Correct</p> <p>15      <b>Q. And they did that, correct?</b></p> <p>16      A. I believe so, yes.</p> <p>17      <b>Q. Are you familiar generally with the Bank</b></p> <p>18      <b>of New York valuations of the collateral posted by</b></p> <p>19      <b>Lehman?</b></p> <p>20      A. Generally, yes.</p> <p>21      <b>Q. Are you aware of any discrepancies</b></p> <p>22      <b>between the Bank of New York valuations for the</b></p> <p>23      <b>collateral and Lehman valuations of that same</b></p> <p>24      <b>collateral?</b></p> <p>25      MR. HUME. Objection to form, what</p>	<p style="text-align: right;">Page 45</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>45</b></p> <p>2       collateral?</p> <p>3       <b>Q. The Barclays collateral.</b></p> <p>4       A. There was certainly a very comprehensive</p> <p>5       reconciliation required because of the number of</p> <p>6       securities that were moving, and some of those</p> <p>7       securities were quite complicated in terms of not</p> <p>8       just the valuation but the actual amounts. These</p> <p>9       are mortgage securities, mortgage pass throughs,</p> <p>10      so there was a very big reconciliation required</p> <p>11      and there were differences identified in the</p> <p>12      details of the securities. There were differences</p> <p>13      in the valuations and for certain there were</p> <p>14      differences in the valuations.</p> <p>15      <b>Q. And this reconciliation process that you</b></p> <p>16      <b>just described, when did that take place?</b></p> <p>17      A. I think the reconciliation that I</p> <p>18      remember sort of in detail was after the closing</p> <p>19      I think we tried to do a reconciliation on the</p> <p>20      Friday. When I say "we", it was within the</p> <p>21      operations team, and certainly after the 22nd or</p> <p>22      on the 22nd, and after there were more detailed</p> <p>23      reconciliations produced.</p> <p>24      <b>Q. When you got to Barclays were you</b></p> <p>25      <b>involved in dealing with Barclays' accountants in</b></p>

<p style="text-align: right;">Page 46</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       46</p> <p>2       accounting for the economics of the acquisition of</p> <p>3       Lehman by Barclays?</p> <p>4       A. We were asked to contribute to the</p> <p>5       initial balance sheet, the preparation of an</p> <p>6       initial balance sheet, but I would say that my</p> <p>7       involvement with the accountants was as an</p> <p>8       information provider and was sporadic. I was not</p> <p>9       involved in -- after the initial balance sheet,</p> <p>10       components of the initial balance sheet were</p> <p>11       provided, our balance sheet commitment, I don't</p> <p>12       think I did very much in terms of the accounting</p> <p>13       for the transaction.</p> <p>14       <b>Q. In addition to helping with the</b></p> <p>15       <b>preparation of the initial balance sheet, did you</b></p> <p>16       <b>play any role in reviewing the valuation of the</b></p> <p>17       <b>acquisition in connection with the year-end</b></p> <p>18       <b>results for Barclays?</b></p> <p>19       A. I saw the balance sheet, the acquisition</p> <p>20       balance sheet a number of times, and as I say I</p> <p>21       was peripherally involved. The accounting for</p> <p>22       this was quite complicated because of the</p> <p>23       different entities that were involved, and so yes</p> <p>24       I saw some details but the overall economics</p> <p>25       I would say was not really clear to me. I was not</p>	<p style="text-align: right;">Page 47</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       47</p> <p>2       sort of involved at that level</p> <p>3       <b>Q. You are generally aware that Barclays</b></p> <p>4       <b>has reported a gain on the acquisition, correct?</b></p> <p>5       A. Yes. I mean, I am aware of what was</p> <p>6       publicly disclosed. I have not seen the details</p> <p>7       of the calculation of that.</p> <p>8       <b>Q. What is your general understanding of</b></p> <p>9       <b>the magnitude of the gain reported by Barclays for</b></p> <p>10       <b>the year-end 2008 from the Lehman acquisition?</b></p> <p>11       A. That a gain on acquisition was reported</p> <p>12       of over 2 billion pounds.</p> <p>13       <b>Q. Over 2 billion pounds?</b></p> <p>14       A. Yes.</p> <p>15       <b>Q. Is it your understanding that there may</b></p> <p>16       <b>well be additional gains from the acquisition that</b></p> <p>17       <b>have not yet been reported by Barclays?</b></p> <p>18       MR. HUME: Objection.</p> <p>19       A. I am not aware of that.</p> <p>20       <b>Q. You don't know one way or the other?</b></p> <p>21       A. I don't.</p> <p>22       <b>Q. Did you ever talk to anyone as to why</b></p> <p>23       <b>Barclays was getting a 5 billion-dollar discount</b></p> <p>24       <b>on this transaction?</b></p> <p>25       A. I don't think I did, no.</p>
<p style="text-align: right;">Page 48</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       48</p> <p>2       <b>Q. You told us that you reviewed the asset</b></p> <p>3       <b>purchase agreement and the clarification letter at</b></p> <p>4       <b>some time after the closing of the transaction?</b></p> <p>5       A. No, I didn't say I reviewed them.</p> <p>6       I said I was shown parts of the asset purchase</p> <p>7       agreement and the clarification letter.</p> <p>8       <b>Q. Even better. Do you recall whether the</b></p> <p>9       <b>asset purchase agreement or the clarification</b></p> <p>10       <b>letter reflect a 5 billion-dollar discount?</b></p> <p>11       MR. HUME: Objection to the form of the</p> <p>12       question. What do you mean "reflect"?</p> <p>13       <b>Q. Do you have my question in mind?</b></p> <p>14       A. Could you repeat it, please?</p> <p>15       (Read back)</p> <p>16       MR. HUME Again I am going to object to</p> <p>17       the question since you have not shown him the</p> <p>18       agreements, he is not a lawyer and he was not</p> <p>19       a negotiator.</p> <p>20       <b>Q. You were shown parts of the agreements,</b></p> <p>21       <b>right, that is what you said?</b></p> <p>22       A. I just don't know.</p> <p>23       <b>Q. Let me ask you the question. You were</b></p> <p>24       <b>shown parts of these agreements, the asset</b></p> <p>25       <b>purchase agreement and the clarification letter,</b></p>	<p style="text-align: right;">Page 49</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       49</p> <p>2       <b>right?</b></p> <p>3       A. Yes.</p> <p>4       <b>Q. The parts that you were shown, did they</b></p> <p>5       <b>show a 5 billion-dollar discount?</b></p> <p>6       MR. HUME: Do you recall is the</p> <p>7       question.</p> <p>8       A. I don't recall, no.</p> <p>9       <b>Q. What parts of the agreement do you</b></p> <p>10       <b>recall being shown?</b></p> <p>11       A. I don't know. I don't know. I didn't</p> <p>12       see the whole agreement so -- I don't think I saw</p> <p>13       the whole agreement. I saw components of it</p> <p>14       related to the various schedules of assets that</p> <p>15       were being transferred and to some of the other</p> <p>16       assets that were included in the agreement.</p> <p>17       <b>Q. Was there a particular task or event in</b></p> <p>18       <b>connection with which you were shown these pieces</b></p> <p>19       <b>or parts of the transaction documents?</b></p> <p>20       A. Yes, in the preparation I would say of</p> <p>21       revisions to Schedule B to the agreement and in</p> <p>22       the analysis of the 15c3 receivables.</p> <p>23       <b>Q. And what role did you play in connection</b></p> <p>24       <b>with the revisions to Schedule B?</b></p> <p>25       A. Providing some analytical support to the</p>

<p style="text-align: right;">Page 50</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>50</b></p> <p>2 determination of available collateral.</p> <p>3       <b>Q. Does that mean you determined what</b></p> <p>4 <b>collateral was available to be included in</b></p> <p>5 <b>Schedule B?</b></p> <p>6       A. No.</p> <p>7       <b>Q. What do you mean by "analytical</b></p> <p>8 <b>support"?</b></p> <p>9       A. It means that I helped coordinate the</p> <p>10 process of reviewing collateral that may be</p> <p>11 available that was being extracted from various</p> <p>12 systems that you would typically use, whether it</p> <p>13 was the operations systems or some of the</p> <p>14 databases which aggregate that information and</p> <p>15 provide a different cut of analysis. So my work,</p> <p>16 my involvement, was in reviewing that to ensure</p> <p>17 that it was being appropriately queried and</p> <p>18 analyzed and understood, validated.</p> <p>19       <b>Q. Who else was involved in this process?</b></p> <p>20       A. The operations team were really the</p> <p>21 experts in the operating systems and therefore in</p> <p>22 understanding the availability of collateral.</p> <p>23       <b>Q. Who was the operations team?</b></p> <p>24       A. Alastair --</p> <p>25       <b>Q. Who was the operations team doing this?</b></p>	<p style="text-align: right;">Page 51</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>51</b></p> <p>2       A. Alastair Blackwell manages that team.</p> <p>3 I would say that Jim Hraska was the person most</p> <p>4 involved</p> <p>5       <b>Q. And this event that you are describe,</b></p> <p>6 <b>the revisions to Schedule B, this is post-closing,</b></p> <p>7 <b>correct?</b></p> <p>8       A. That is correct.</p> <p>9       <b>Q. And in the weeks immediately after the</b></p> <p>10 <b>closing of the transaction?</b></p> <p>11       A. Pre-closing there was an analysis</p> <p>12 performed to determine the unencumbered</p> <p>13 collateral, as I am sure you are aware, which was</p> <p>14 the basis for the original Schedule B. The</p> <p>15 subsequent analysis I would say was to correct for</p> <p>16 errors that may have been made in the initial</p> <p>17 aggregation of information in the initial</p> <p>18 analysis, and to reflect some of the breaks in the</p> <p>19 different systems that were used, stock record</p> <p>20 breaks for example. That exercise continued</p> <p>21 sporadically through the remaining three months of</p> <p>22 2008.</p> <p>23       <b>Q. Again, just talking about the revisions</b></p> <p>24 <b>to Schedule B, I want to talk about the</b></p> <p>25 <b>post-closing revisions to Schedule B. The errors</b></p>
<p style="text-align: right;">Page 52</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>52</b></p> <p>2 you are talking about, is it errors about</p> <p>3 identifying particular pieces of collateral? Is</p> <p>4 that the nature?</p> <p>5       A. That is correct.</p> <p>6       <b>Q. When you said "stock record breaks",</b></p> <p>7 <b>what do you mean by "stock record breaks"?</b></p> <p>8       A. These are breaks between the internal</p> <p>9 accounting records and the external depository</p> <p>10 statements.</p> <p>11       <b>Q. In terms of ownership of particular</b></p> <p>12 <b>securities, is that what you mean?</b></p> <p>13       A. In terms of possession</p> <p>14       <b>Q. Did these revisions to Schedule B that</b></p> <p>15 <b>took place post-close affect the value of the</b></p> <p>16 <b>collateral that was listed on Schedule B, the</b></p> <p>17 <b>total value?</b></p> <p>18       MR. HUME: Objection. The revisions to</p> <p>19 Schedule B are being referred to -- I believe the</p> <p>20 record is unclear whether you mean revisions to</p> <p>21 the schedule filed a week after the closing or any</p> <p>22 subsequent work after that. For the line of</p> <p>23 questioning to be clear that needs to be made</p> <p>24 clear in the questions.</p> <p>25       MR. TAMBE: I am talking about the</p>	<p style="text-align: right;">Page 53</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>53</b></p> <p>2 revisions to Schedule B that you talked about,</p> <p>3 Mr. Tonucci</p> <p>4       MR. HUME: There have been a number of</p> <p>5 answers that he has provided so I still think the</p> <p>6 question is unclear</p> <p>7       MR. TAMBE: So the revisions to Schedule</p> <p>8 B that you were talking about, did those revisions</p> <p>9 affect the total value of the Schedule B?</p> <p>10       A. I am referring to the revisions that</p> <p>11 happened in the period after the initial filing of</p> <p>12 Schedule B and I am not sure when and if the --</p> <p>13 you know, when and if revisions were actually</p> <p>14 lodged with the court. I am not a lawyer and I am</p> <p>15 not sure what the legal process was but certainly</p> <p>16 the internal calculations of unencumbered</p> <p>17 collateral is what I am referring to as the</p> <p>18 revisions to Schedule B that happened essentially</p> <p>19 after the initial filing of Schedule B in</p> <p>20 late September, and those revisions changed the</p> <p>21 collateral detail significantly. So the values</p> <p>22 clearly changed along with the composition of the</p> <p>23 assets.</p> <p>24       <b>Q. Did they change up, increasing value, or</b></p> <p>25 <b>did they change down?</b></p>

<p style="text-align: right;">Page 54</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>54</b></p> <p>2       A. I believe they changed in both 3       directions.</p> <p>4       <b>Q. As an aggregate?</b></p> <p>5       A. I don't know.</p> <p>6       <b>Q. Do you have an understanding as to the</b> 7       <b>origination of Schedule B?</b></p> <p>8       A. I do.</p> <p>9       <b>Q. What is your understanding about the</b> 10       <b>origination of Schedule B?</b></p> <p>11       A. The origination of Schedule B was to 12       list the unencumbered collateral that was to be 13       included within the sale and purchase agreement.</p> <p>14       <b>Q. So this was unencumbered collateral</b> 15       <b>other than the collateral that had already been</b> 16       <b>posted to Barclays under the Barclays repo,</b> 17       <b>correct?</b></p> <p>18       A. That is correct.</p> <p>19       <b>Q. And is it your recollection that the</b> 20       <b>origination of Schedule B goes back to Friday,</b> 21       <b>19 September?</b></p> <p>22       MR. HUME Objection, lacks foundation.</p> <p>23       A. That is correct.</p> <p>24       <b>Q. And do you recall there being an effort</b> 25       <b>on September 19 to find additional collateral for</b></p>	<p style="text-align: right;">Page 55</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>55</b></p> <p>2       <b>Barclays?</b></p> <p>3       A. I do.</p> <p>4       <b>Q. What can you tell us about the efforts</b> 5       <b>to find additional collateral for Barclays?</b></p> <p>6       A. That we were asked on the morning of the 7       19th to find if there was additional collateral to 8       include in the transaction</p> <p>9       <b>Q. Asked by whom?</b></p> <p>10       A. I believe I was asked by Ian Lowitt.</p> <p>11       <b>Q. Did Ian Lowitt tell you why he was</b> 12       <b>asking you to find additional collateral?</b></p> <p>13       A. He said that it was necessary for the 14       transaction to close and he reiterated that 15       through the day.</p> <p>16       <b>Q. In addition to Schedule B, were there</b> 17       <b>other collections of assets that were put together</b> 18       <b>to provide additional collateral to Barclays?</b></p> <p>19       A. There were receivables in the form of 20       the 15c3 reserve, which were reviewed, and through 21       the course of the Friday there were other 22       receivables that were also reviewed to determine 23       if they could be included as assets or collateral 24       in the sales agreement.</p> <p>25       <b>Q. What other receivables?</b></p>
<p style="text-align: right;">Page 56</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>56</b></p> <p>2       A. We reviewed derivative receivables and 3       margin balances, FX receivables, that is foreign 4       exchange. I should add actually we also reviewed 5       some bank receivables, because there had been cash 6       posted with some of the clearing banks, so that 7       was also reviewed.</p> <p>8       <b>Q. Safe to say you looked in every corner</b> 9       <b>for assets and receivables that you could deliver</b> 10       <b>to Barclays?</b></p> <p>11       MR. HUME Objection, vague and 12       ambiguous.</p> <p>13       A. We reviewed the balance sheet to see 14       where there might be additional assets.</p> <p>15       <b>Q. You looked everywhere, right?</b></p> <p>16       A. We looked across the whole balance 17       sheet.</p> <p>18       <b>Q. And this was a directive from Mr. Lowitt</b> 19       <b>to find these assets, correct?</b></p> <p>20       A. That is correct.</p> <p>21       <b>Q. And you found a bunch of unencumbered</b> 22       <b>assets and put them in Schedule B?</b></p> <p>23       A. That is correct.</p> <p>24       <b>Q. And then you found these 15c3</b> 25       <b>receivables, is that right?</b></p>	<p style="text-align: right;">Page 57</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>57</b></p> <p>2       A. I would say we identified the 15c3 3       receivables as an asset that could be transferred</p> <p>4       <b>Q. Who is the "we" who identified those</b> 5       <b>receivables?</b></p> <p>6       A. It was again overseen by Ian but it was 7       myself, Martin Kelly, Robert Azerad.</p> <p>8       <b>Q. What was approximately the value of the</b> 9       <b>15c3 receivables that you identified?</b></p> <p>10       A. There was uncertainty, a great deal of 11       uncertainty about the excess, but there was 12       certainty about the actual deposits that had been 13       made for 15c3, which included a cash deposit with 14       Wells Fargo for a billion dollars and securities 15       which in the calculation had been valued at, I 16       believe, \$769 million</p> <p>17       <b>Q. And so that is about what, \$1.7 billion</b> 18       <b>total?</b></p> <p>19       A. That is correct. There may have been 20       other balances. I think that there were other 21       securities balances also that were on deposit but 22       I recall specifically those two.</p> <p>23       <b>Q. On the Friday the 19th, is it your</b> 24       <b>recollection that the 15c3 receivables were</b> 25       <b>identified as assets or receivables that in fact</b></p>

<p style="text-align: right;">Page 58</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>58</b></p> <p>2       <b>could be transferred to Barclays?</b></p> <p>3        MR. HUME: Objection to the lack of</p> <p>4        foundation.</p> <p>5        A. That is correct, that is my</p> <p>6        understanding.</p> <p>7        <b>Q. From your earlier answer it seems that</b></p> <p>8        <b>there were receivables that you identified that</b></p> <p>9        <b>maybe you concluded could not be transferred to</b></p> <p>10       <b>Barclays, is that fair?</b></p> <p>11       A. That is correct.</p> <p>12       <b>Q. The 15c3's could be transferred to</b></p> <p>13       <b>Barclays, right?</b></p> <p>14       MR. HUME: Objection to the vagueness of</p> <p>15       the question. What do you mean by "could"?</p> <p>16       A. I mean, I would try and clarify this --</p> <p>17       <b>Q. Sure.</b></p> <p>18       A. The thinking was that there was</p> <p>19       a surplus, in that calculation that although it</p> <p>20       was uncertain as to both the amount of the surplus</p> <p>21       and the requirement, these represented assets</p> <p>22       which were transferable and, you know,</p> <p>23       identifiable and transferable I would say that</p> <p>24       the distinction with some of the other receivables</p> <p>25       was that it was much more difficult, given our</p>	<p style="text-align: right;">Page 59</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>59</b></p> <p>2       information, our sort of accounting position at</p> <p>3       that time, our transactional detail at that time,</p> <p>4       it was much more difficult to identify specific</p> <p>5       receivables that could have been transferred. So</p> <p>6       it was more a matter of that these were much more</p> <p>7       easily identifiable, but yes, we did believe that</p> <p>8       they were transferable, or would become</p> <p>9       transferable. It was always understood that there</p> <p>10       was a regulatory approval that would be required</p> <p>11       but that they would become transferable.</p> <p>12       <b>Q. Did you have any discussions with</b></p> <p>13       <b>Mr. Lowitt as to whether transferring those</b></p> <p>14       <b>receivables was part of the deal with Barclays?</b></p> <p>15       MR. HUME: Objection, what receivables?</p> <p>16       <b>Q. The 15c3 receivables?</b></p> <p>17       A. I do recall talking to him about that,</p> <p>18       yes.</p> <p>19       <b>Q. What did he tell you?</b></p> <p>20       A. We were looking for potential other</p> <p>21       assets and so we were going to include this in the</p> <p>22       agreement.</p> <p>23       <b>Q. Do you know one way or the other whether</b></p> <p>24       <b>the 15c3 receivables were part of the asset</b></p> <p>25       <b>purchase agreement?</b></p>
<p style="text-align: right;">Page 60</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>60</b></p> <p>2       A. I can't recall if they were part of the</p> <p>3       asset purchase agreement or some clarification</p> <p>4       letter.</p> <p>5       <b>Q. The parts of the asset purchase</b></p> <p>6       <b>agreement or the clarification letter that were</b></p> <p>7       <b>shown to you, do you recall whether they had any</b></p> <p>8       <b>reference to the 15c3 assets?</b></p> <p>9       A. I don't recall. I don't recall which.</p> <p>10       I do recall that there was in one or other of</p> <p>11       those documents a reference to that, to those</p> <p>12       assets.</p> <p>13       <b>Q. The other receivables you mentioned, the</b></p> <p>14       <b>derivatives receivables, could you describe what</b></p> <p>15       <b>you mean by derivative receivables?</b></p> <p>16       A. Yes. Particularly for LBI there were</p> <p>17       substantial margins posted at the exchanges, which</p> <p>18       were accounted for, essentially accounted for as</p> <p>19       receivables, and those are what I refer to as</p> <p>20       derivative receivables.</p> <p>21       <b>Q. Would an example of derivative</b></p> <p>22       <b>receivables be these types of receivables that</b></p> <p>23       <b>were posted with the OCC?</b></p> <p>24       MR. HUME. Objection to the form of the</p> <p>25       question. These type? Which type of receivables?</p>	<p style="text-align: right;">Page 61</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>61</b></p> <p>2       <b>Q. Derivative receivables?</b></p> <p>3       A. I would say that would be consistent</p> <p>4       with my understanding.</p> <p>5       <b>Q. And the OCC is the Options Clearing</b></p> <p>6       <b>Corp?</b></p> <p>7       A. That is correct.</p> <p>8       <b>Q. Do you recall in the bits and pieces of</b></p> <p>9       <b>the asset purchase agreement, the APA and the</b></p> <p>10       <b>clarification letter that was shown to you whether</b></p> <p>11       <b>those documents provided for derivatives</b></p> <p>12       <b>receivables to be transferred to Barclays?</b></p> <p>13       MR. HUME: Objection. You are asking</p> <p>14       this witness to give an opinion on a legal</p> <p>15       document that you have not shown him. He is not</p> <p>16       a lawyer and he said he was not a negotiator of</p> <p>17       the deal.</p> <p>18       MR. TAMBE. You have an objection to</p> <p>19       foundation and form.</p> <p>20       MR. HUME: I am not just objecting to</p> <p>21       foundation. It is an inappropriate, misleading</p> <p>22       question.</p> <p>23       MR. TAMBE: Don't make speaking</p> <p>24       objections. Object to form, move on, we will get</p> <p>25       through this faster.</p>

Page 62		Page 63	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	62	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	MR. HUME: It is not just an objection	2	A There was insufficient detail to be able
3	to form.	3	to confirm that, that still existed at that
4	MR. TAMBE. Are you instructing him not	4	point in time.
5	to answer?	5	<b>Q. At some subsequent point in time was</b>
6	MR. HUME: I am objecting to	6	<b>a determination made as to those FX receivables?</b>
7	a misleading line of questioning.	7	A I don't know.
8	MR. TAMBE: Thank you.	8	<b>Q. Another category of receivables you</b>
9	Mr. Tonucci, do you have my question in	9	<b>identified were bank receivables?</b>
10	mind?	10	A. Yes.
11	(Read back)	11	<b>Q. Again, the same series of questions on</b>
12	A. I don't recall.	12	<b>the bank receivables; was a determination made on</b>
13	<b>Q. Another type of receivable you described</b>	13	<b>the 19th that those were transferable to Barclays?</b>
14	<b>before were FX receivables?</b>	14	A. On the 19th there was a determination
15	A. Um hum	15	made that it was too complicated and too uncertain
16	<b>Q. Did you identify any foreign exchange</b>	16	to be able to say whether those were transferable
17	<b>receivables that could be transferred to Barclays?</b>	17	<b>Q. And on some subsequent date after the</b>
18	A. There was a receivable balance for	18	<b>19th was a determination made as to whether those</b>
19	forward settling foreign exchange on the LBI	19	<b>could be transferred?</b>
20	balance sheet.	20	A. I don't know.
21	<b>Q. And the determination was that those</b>	21	<b>Q. You were in New York during this week,</b>
22	<b>receivables could be transferred to Barclays, is</b>	22	<b>correct?</b>
23	<b>that right?</b>	23	A. That is correct.
24	MR. HUME: Objection to the form,	24	<b>Q. Do you recall accepting your offer of</b>
25	objection to the vagueness of the word --	25	<b>employment at Barclays?</b>
Page 64		Page 65	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	64	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	A. I do.	2	<b>Q. You were accepting an offer of</b>
3	<b>Q. When did you do that?</b>	3	<b>employment for Barclays, right?</b>
4	A. I believe it was 26 September.	4	A. Yes.
5	<b>Q. You sent an e-mail on the morning of the</b>	5	<b>Q. What offer were you accepting on</b>
6	<b>22nd accepting your offer, right?</b>	6	<b>Monday September 22 at 1:04 pm GMT?</b>
7	MR. HUME. Objection, lacks foundation.	7	A. I can't recall the details at that point
8	A. I can't remember.	8	but I believe that the offers went out over the
9	<b>Q. Do you recall about an hour after the</b>	9	weekend, but I don't recall the exact details of
10	<b>ink dried on the clarification letter you sent an</b>	10	it at that point. I recall the hard copy in more
11	<b>e-mail?</b>	11	detail. I am not too sure when that was sent out
12	MR. HUME: Objection to form.	12	<b>Q. If I understand your answer, at some</b>
13	A. I don't remember.	13	<b>point over the weekend of the 20th/21st you</b>
14	<b>Q. Let me show it to you.</b>	14	<b>received a soft copy of the offer?</b>
15	(Exhibit 137A marked for identification)	15	A. Yes.
16	I have handed you a one page document	16	<b>Q. And at some point during the week of the</b>
17	marked Exhibit 137A. Do you have that before you?	17	<b>22nd you actually signed a hard copy?</b>
18	A. I do.	18	A. That is correct.
19	<b>Q. Do you recognize this as an e-mail that</b>	19	<b>Q. But you knew before the 20th that you</b>
20	<b>you sent to an e-mail box called "Accept Barclays</b>	20	<b>would be offered employment by Barclays, correct?</b>
21	<b>offer at Lehman.com"?</b>	21	MR. HUME: Objection.
22	A. Yes.	22	A. I knew on the evening of the 19th that
23	<b>Q. And the subject simply says: "I accept".</b>	23	I would receive an offer from Barclays
24	<b>Correct?</b>	24	<b>Q. Had you had any discussions with anyone</b>
25	A. Yes.	25	<b>prior to September 19 about receiving an offer</b>

<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       66</p> <p>2       <b>from Barclays?</b></p> <p>3       A. No.</p> <p>4       <b>Q. What was the communication you received</b></p> <p>5       <b>on the evening of September 19 about an offer from</b></p> <p>6       <b>Barclays?</b></p> <p>7       A. After the Lehman and the Barclays and</p> <p>8       the other teams had gone to the bankruptcy court,</p> <p>9       after the day's work had been completed and I was</p> <p>10      going to head home, and I had been up all night so</p> <p>11      I was exhausted, and so I am not too sure, I am</p> <p>12      not too sure of the exact time, before departing</p> <p>13      for the day Ian Lowitt advised me that I would</p> <p>14      receive an offer, and he gave me the general terms</p> <p>15      that I would likely be offered.</p> <p>16      <b>Q. When you say "the general terms", the</b></p> <p>17      <b>general economic terms of the offer?</b></p> <p>18      A. The general economic terms, but I was</p> <p>19      not sure of the position at that point.</p> <p>20      <b>Q. Prior to that September 19, had you had</b></p> <p>21      <b>discussions with Ian about what your future held</b></p> <p>22      <b>for you?</b></p> <p>23      A. No.</p> <p>24      <b>Q. No discussions?</b></p> <p>25      A. No.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       67</p> <p>2       <b>Q. Did you try to get any assurance from</b></p> <p>3       <b>him or anyone else about whether there was a place</b></p> <p>4       <b>for you at Barclays?</b></p> <p>5       A. No</p> <p>6       <b>Q. You knew he would be heading to</b></p> <p>7       <b>Barclays, right?</b></p> <p>8       A. I didn't, no.</p> <p>9       <b>Q. Did you know whether any of the folks</b></p> <p>10      <b>that you were working with at Lehman that week</b></p> <p>11      <b>were going to be headed to Barclays?</b></p> <p>12      A. I expected that there would be some that</p> <p>13      were heading to Barclays but I was not sure of</p> <p>14      exactly whom.</p> <p>15      <b>Q. Barclays was buying the North American</b></p> <p>16      <b>operations, correct?</b></p> <p>17      A. Correct</p> <p>18      <b>Q. And they needed people to run those</b></p> <p>19      <b>operations?</b></p> <p>20      A. Correct</p> <p>21      <b>Q. So your expectation was that some</b></p> <p>22      <b>significant number of Lehman folks would in fact</b></p> <p>23      <b>get offers from Barclays?</b></p> <p>24      A. That is correct.</p> <p>25      <b>Q. And you certainly hoped to be included</b></p>
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       68</p> <p>2       <b>in that group?</b></p> <p>3       A. Yes, I think it is fair to say I hoped</p> <p>4       to be included.</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12      <b>REDACTED</b></p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12      <b>REDACTED</b></p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23      MR. HUME: Sorry, I am unsure. We are</p> <p>24      going to designate obviously any portion of the</p> <p>25      transcript that relates to compensation highly</p> <p>Page 68</p> <p>Page 69</p>

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 2 confidential. Is it understood we can do that 3 after the deposition? 4 MR. TAMBE: Yes, and I think the 5 agreement that was reached at the Felder 6 deposition we assume carries for all depositions. 7 MR. HUME. For all designations we can 8 do it later rather than during. 9 MR. TAMBE: You can do it later. Let's 10 just follow the Felder rule. I think it was that 11 we were going to treat the entire transcript as 12 highly confidential. 13 MR. MAGUIRE: Treating the entire 14 transcript as highly confidential for a week and 15 make the designations within the week. 16 17 18 19 20 21 22 23 24 25	Page 70 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 71 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 72 1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 2 well? 3 A. Yes. 4 Q. John Palchynsky, what position did he 5 have at Lehman? 6 A. He was in the operations team. 7 Q. Did he make the move to Barclays? 8 A. Yes. 9 Q. John Feraca, Was he in the operations 10 team at Lehman as well? 11 A. He was in the prime services team 12 Q. Did he make the move to Barclays? 13 A. Yes. 14 Q. Monty Forrest, what was his position at 15 Lehman? 16 A. He was in the prime services team. 17 Q. Did he make the move to Barclays? 18 A. He did. 19 Q. Neil Ullman, what was his position at 20 Lehman? 21 A. He was in the operations team. 22 Q. Did he make the move to Barclays? 23 A. He did. 24 Q. Dan Fleming, you have mentioned before. 25 Did he make the move to Barclays?	Page 73 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

<p style="text-align: right;">Page 74</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>      74</p> <p>2       A. He did.</p> <p>3       <b>Q. Just a question about the e-mail address</b></p> <p>4       <b>for Mr. Fleming. It has in parentheses "TSY"</b></p> <p>5       <b>after it. Do you see that?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. Any understanding what that means?</b></p> <p>8       A. Treasury.</p> <p>9       <b>Q. And that was a designation used within</b></p> <p>10      <b>Lehman?</b></p> <p>11      A. I don't know. I think that the TSY</p> <p>12      designation is used where there may be more than</p> <p>13      one person, just to identify which one it is.</p> <p>14      <b>Q. Craig Jones, what was his position</b></p> <p>15      <b>within Lehman?</b></p> <p>16      A. He was in treasury.</p> <p>17      <b>Q. Did he make it over to Barclays?</b></p> <p>18      A. He did.</p> <p>19      <b>Q. Look at the top half of Exhibit 139A.</b></p> <p>20      There is a message there from Mr. Palchynsky to</p> <p>21      several people, including you. Do you see that?</p> <p>22      A. I do.</p> <p>23      <b>Q. He says in there: "Anyway, see you all</b></p> <p>24      <b>at BarCap". Do you see that?</b></p> <p>25      A. I do.</p>	<p style="text-align: right;">Page 75</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>      75</p> <p>2       <b>Q. There is an e-mail dated September 19,</b></p> <p>3       <b>2008. Do you see that?</b></p> <p>4       A. I do.</p> <p>5       <b>Q. Around 6:28 pm, right?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. So was this the first that you had heard</b></p> <p>8       <b>about your employment at Barclays?</b></p> <p>9       A. I believe that I had heard perhaps an</p> <p>10      hour before that.</p> <p>11      <b>Q. Was this the first that you had heard</b></p> <p>12      <b>that all these other people were also going to be</b></p> <p>13      <b>going to Barclays?</b></p> <p>14      A. This is a relatively junior person in an</p> <p>15      operations area, who could have been speculating.</p> <p>16      It was not clear to me that all of these people</p> <p>17      were going to be moving over</p> <p>18      <b>Q. This chain of e-mails has a subject line</b></p> <p>19      <b>that says: "Urgent, tri unwind". Do you see that?</b></p> <p>20      A. I do</p> <p>21      <b>Q. And what was the "Urgent tri unwind"</b></p> <p>22      <b>about, if you recall?</b></p> <p>23      A. It was to do with the cash balance that</p> <p>24      was placed with JP Morgan on the night by Barclays</p> <p>25      on the night of the 18th, and was part of the</p>
<p style="text-align: right;">Page 76</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>      76</p> <p>2      tri-party arrangement, and it was being unwind.</p> <p>3       <b>Q. And the collection of people on these</b></p> <p>4      <b>e-mails were involved in assisting with that</b></p> <p>5      <b>unwind?</b></p> <p>6       A. They were involved in the repo</p> <p>7      operations.</p> <p>8       <b>Q. So they would have dealt with that</b></p> <p>9      <b>unwind and other aspects of the repo?</b></p> <p>10      A. Yes.</p> <p>11      MR. TAMBE: Thank you. We will take</p> <p>12      a short break now.</p> <p>13      (Break from 8:55 to 9:14 am.).</p> <p>14      <b>Q. I am showing you a document previously</b></p> <p>15      <b>marked as Exhibit 19. Have you seen this document</b></p> <p>16      <b>before today, sir?</b></p> <p>17      A. I have.</p> <p>18      <b>Q. What do you understand it to be?</b></p> <p>19      MR. HUME: Objection to the form.</p> <p>20      A. It was the balance sheet that was I</p> <p>21      believe, you know, part of the negotiation for the</p> <p>22      sale to Barclays, so the estimated balance sheet.</p> <p>23      <b>Q. And the estimated balance sheet for what</b></p> <p>24      <b>entity?</b></p> <p>25      A. For the part of LBI that was being sold.</p>	<p style="text-align: right;">Page 77</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>      77</p> <p>2       <b>Q. Do you recall if this is a document that</b></p> <p>3      <b>you saw during that week, the week</b></p> <p>4      <b>of September 15, 2008?</b></p> <p>5       A. Yes, I believe I saw it on the 16th.</p> <p>6       <b>Q. Do you know in connection with what</b></p> <p>7      <b>event or action did you see this document?</b></p> <p>8       A. In relation to the Barclays contemplated</p> <p>9      purchase.</p> <p>10      <b>Q. Who showed it to you?</b></p> <p>11      A. I think it was Ian Lowitt.</p> <p>12      <b>Q. Did you play any role in the preparation</b></p> <p>13      <b>of this document, Exhibit 19?</b></p> <p>14      A. I did not.</p> <p>15      <b>Q. We had earlier talked about the</b></p> <p>16      <b>\$5 billion discount. Do you know if the</b></p> <p>17      <b>\$5 billion discount was reflected in this</b></p> <p>18      <b>document, Exhibit 19?</b></p> <p>19      MR. HUME: Objection, lacks foundation</p> <p>20      A. I do not know.</p> <p>21      <b>Q. If you look under the "liabilities"</b></p> <p>22      <b>column, last two entries above the total are</b></p> <p>23      <b>titled "Cure PMT" and "Comp". Do you see that?</b></p> <p>24      A. I do.</p> <p>25      <b>Q. And there is a total of about four and</b></p>

Page	78	Page	79
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	78	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>
2	a quarter billion dollars, do you see that?	2	the assets at that time?
3	A I do.	3	<b>Q. His understanding of assets at that time?</b>
4	<b>Q. Did you have any understanding during</b>	4	A I would have expected the assets to be
5	<b>the week of the 15th as to what those items were?</b>	5	of that order.
6	A. No, not really	6	<b>Q. And that is something you would have tracked in connection with your liquidity management function, correct?</b>
7	<b>Q. Do you have any understanding today</b>	7	A. Not in this form This is sort of an
8	<b>about what those items were?</b>	8	accounting representation, and so it was not so
9	A. I can read that the compensation number	9	relevant to funding, which is slightly different,
10	is compensation and I am not sure about the cure	10	a different way of viewing the balance sheet
11	payment.	11	<b>Q. But you would want to know what the aggregate amount of Government and agency paper that Lehman had?</b>
12	<b>Q. At any time from September 15th to the</b>	12	A. Yes.
13	<b>present have you had discussions with anyone,</b>	13	<b>Q. Because that is what you would be pledging as collateral against --</b>
14	<b>other than counsel, about the cure payment and</b>	14	A. That is right.
15	<b>comp liabilities assumed by Barclays?</b>	15	<b>Q. You would care about what commercial</b>
16	A. No, I have not.	16	<b>paper you had?</b>
17	<b>Q. Going up to the assets side of this</b>	17	A. That is right.
18	<b>balance sheet, there is a sub-total of</b>	18	<b>Q. For the same reasons?</b>
19	<b>\$62.7 billion for assets. Do you see that?</b>	19	A. That is right.
20	A. I do.	20	
21	<b>Q. Was that your understanding of the</b>	21	
22	<b>assets available to LBI on or about September 15</b>	22	
23	<b>or September 16 of 2008?</b>	23	
24	MR. HUME. Objection, lacks foundation.	24	
25	Are you asking his understanding at that time or	25	
	Page 80		Page 81
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	80	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>
2	<b>Q. The derivatives item on this Exhibit 19,</b>	2	A. That is right.
3	<b>do you have an understanding as to what that was</b>	3	<b>Q. I have had placed before you a document</b>
4	<b>comprised of?</b>	4	<b>or I have placed before you a document marked</b>
5	A. I mean, the derivative balance is on	5	<b>Exhibit 60B. Take a moment to look at those</b>
6	both sides, the assets and the liabilities, and I	6	<b>2 pages, let me know when you are done.</b>
7	am not sure exactly what went into either of	7	A. Yes.
8	those.	8	<b>Q. Are you familiar with that document?</b>
9	<b>Q. You had talked earlier about being</b>	9	A. No. It is the first time I have seen
10	<b>involved in preparing an opening balance sheet for</b>	10	it.
11	<b>Barclays. Do you recall that?</b>	11	<b>Q. Take a moment to read the cover e-mail</b>
12	A. I do.	12	<b>and the spreadsheet that is attached and I am</b>
13	<b>Q. Did you use Exhibit 19 or a document</b>	13	<b>going to ask you a couple of questions about the</b>
14	<b>like Exhibit 19 as a starting point for that work</b>	14	<b>information that is contained in that document,</b>
15	<b>that you did?</b>	15	<b>and let me know when you are done.</b>
16	MR. HUME: Objection to the form.	16	A. Okay.
17	A. No, I did not.	17	<b>Q. Turning to the attachment to the cover</b>
18	<b>Q. What process did you follow in preparing</b>	18	<b>e-mail, do you have a general understanding of the</b>
19	<b>the opening balance sheet?</b>	19	<b>nature of the information that is contained on</b>
20	A. In reconstructing the balance sheet we	20	<b>that spreadsheet that is the second page of</b>
21	used the transactions which we understood to have	21	<b>Exhibit 60B?</b>
22	settled or be in the process of settling.	22	A. Yes, a general understanding.
23	<b>Q. And by "the transactions" you mean the</b>	23	MR. HUME: May I just ask, the e-mail
24	<b>transactions pursuant to the asset purchase</b>	24	says it is September 18, 2008 The attachment is
25	<b>agreement, the clarification letter?</b>	25	dated March 27, 2009.

<p style="text-align: right;">Page 82</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       82</p> <p>2       MR. TAMBE: I think the attachment is</p> <p>3       a native format document so when you print it out</p> <p>4       it prints out the date on which it was printed</p> <p>5       out. That is just my guess.</p> <p>6       MR. HUME: This is not Bates numbered.</p> <p>7       MR. TAMBE: No, it is not.</p> <p>8       MR. HUME: So I am objecting to the form</p> <p>9       of the exhibit.</p> <p>10      MR. TAMBE: Okay.</p> <p>11      MR. HUME: And I am reserving all rights</p> <p>12      to object to the authenticity of the exhibit.</p> <p>13      MR. TAMBE: Do you have my question in</p> <p>14      mind? Probably not.</p> <p>15      A. I don't</p> <p>16      <b>Q. We will have it read back.</b></p> <p>17      <b>(Previous Question and Answer Read back)</b></p> <p>18      <b>Looking down this attachment to Exhibit 60B and</b></p> <p>19      <b>the left-hand column under the heading "Program", there is</b></p> <p>20      <b>a series of entries with the title "TSLF". Do you see that?</b></p> <p>21      A. I do.</p> <p>22      <b>Q. Do you recognize that as a Fed funding</b></p> <p>23      <b>program?</b></p> <p>24      A. I do.</p> <p>25      <b>Q. And that the term security is lending</b></p>	<p style="text-align: right;">Page 83</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       83</p> <p>2       <b>facility?</b></p> <p>3       A. That is correct</p> <p>4       <b>Q. There is a total associated with that,</b></p> <p>5       <b>do you see that?</b></p> <p>6       A. I do.</p> <p>7       <b>Q. The next item is "PDCF", and that is the</b></p> <p>8       <b>prime dealer credit facility, is that right?</b></p> <p>9       A. Primary dealers credit facility.</p> <p>10      <b>Q. Primary dealers, and the next item is</b></p> <p>11      <b>OMO, and that is open market operations?</b></p> <p>12      A. That is correct</p> <p>13      <b>Q. And all three of these items, TSLF, PDCF</b></p> <p>14      <b>and OMO are Fed funding facilities that were</b></p> <p>15      <b>available back in September 2008?</b></p> <p>16      A. That is correct</p> <p>17      <b>Q. Looking at the amounts, the grand total</b></p> <p>18      <b>amounts at the bottom, is it your recollection</b></p> <p>19      <b>that that was roughly the amount of the Fed</b></p> <p>20      <b>facility borrowing as of September 18, 2008?</b></p> <p>21      MR. HUME: Objection to the form.</p> <p>22      A. Yes, that sounds about right</p> <p>23      <b>Q. I would like your understanding of the</b></p> <p>24      <b>different values that appear in the grand total</b></p> <p>25      <b>line or row.</b></p>
<p style="text-align: right;">Page 84</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       84</p> <p>2       MR. HUME: What grand total line, which</p> <p>3       line?</p> <p>4       MR. TAMBE: There is only one grand</p> <p>5       total line.</p> <p>6       MR. HUME: At the bottom?</p> <p>7       <b>Q. Yes. Par amount, \$43 billion and</b></p> <p>8       <b>change. Do you see that?</b></p> <p>9       A. Yes.</p> <p>10      <b>Q. Do you have an understanding as to what</b></p> <p>11      <b>that is a reference to?</b></p> <p>12      A. I do.</p> <p>13      <b>Q. Okay, what?</b></p> <p>14      A. Par amount of the securities.</p> <p>15      <b>Q. So that would be the par amount of</b></p> <p>16      <b>securities pledged?</b></p> <p>17      A. That is correct.</p> <p>18      <b>Q. The next column over is titled "Current</b></p> <p>19      <b>market". Do you see that?</b></p> <p>20      A. I do.</p> <p>21      <b>Q. And that carries a value at the bottom,</b></p> <p>22      <b>the grand total row of \$49.7 billion. Do you see</b></p> <p>23      <b>that?</b></p> <p>24      A. I do.</p> <p>25      <b>Q. What is your understanding of what that</b></p>	<p style="text-align: right;">Page 85</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       85</p> <p>2       <b>column and that grand total represents?</b></p> <p>3       MR. HUME: Objection, lacks foundation.</p> <p>4       A. I could only read what it says, which is</p> <p>5       "current market", and I would assume that is the</p> <p>6       current market valuation as attributed by whoever</p> <p>7       is preparing this document</p> <p>8       <b>Q. And then the next two columns are</b></p> <p>9       <b>"Paydown amount" and "Anticipated prefunding</b></p> <p>10      <b>dollar amount". Do you have an understanding of</b></p> <p>11      <b>what these terms means?</b></p> <p>12      MR. HUME: Objection. I believe you are</p> <p>13      asking the witness to speculate about a document</p> <p>14      he has not seen before.</p> <p>15      <b>Q. Managing liquid, you know what paydown</b></p> <p>16      <b>amounts are?</b></p> <p>17      A. It is actually not a term that I would</p> <p>18      typically use.</p> <p>19      <b>Q. Any understanding what that term means?</b></p> <p>20      A. I assume that that is the cash component</p> <p>21      of the transaction.</p> <p>22      <b>Q. And the anticipated prefunding dollar</b></p> <p>23      <b>amount, is that a term you are familiar with?</b></p> <p>24      A. No.</p> <p>25      <b>Q. Not a term you use?</b></p>

<p style="text-align: right;">Page 86</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       86</p> <p>2       A. No</p> <p>3       <b>Q. Any idea what that means?</b></p> <p>4            MR. HUME: Objection, calls for</p> <p>5            speculation.</p> <p>6       A. No, not really</p> <p>7            MR. HUME: He is asking you to</p> <p>8            speculate.</p> <p>9       <b>Q. Just in broad dollar terms, was it your</b></p> <p>10      <b>understanding that the amount of the Fed facility</b></p> <p>11      <b>on or about September 18, 2008, was a funding of</b></p> <p>12      <b>about \$44 billion or \$45 billion against a market</b></p> <p>13      <b>value of collateral of about \$50 billion?</b></p> <p>14       A. Yes, that sounds right.</p> <p>15           (Exhibit 140A marked for identification)</p> <p>16       <b>Q. I have had placed before you a document</b></p> <p>17      <b>marked Exhibit 140A, a 3-page document. Take</b></p> <p>18      <b>a moment to look at it, let me know when you are</b></p> <p>19      <b>done. You done?</b></p> <p>20       A. I have read through it.</p> <p>21       <b>Q. Do you recognize that document?</b></p> <p>22       A. Actually, I can't recall going through</p> <p>23       this, no.</p> <p>24       <b>Q. Do you see the cover e-mail is an e-mail</b></p> <p>25      <b>from Mr. Robert Azerad?</b></p>	<p style="text-align: right;">Page 87</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       87</p> <p>2       A. Yes.</p> <p>3       <b>Q. Martin Kelly?</b></p> <p>4       A. Yes.</p> <p>5       <b>Q. You are shown as a cc on that?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. Do you understand the information that</b></p> <p>8      <b>is contained on page 2 of Exhibit 140A?</b></p> <p>9       A. Not entirely sure I do.</p> <p>10       <b>Q. Do you recall there being a discussion</b></p> <p>11      <b>or an analysis during that week of September 15</b></p> <p>12      <b>about assets available to be transferred by LBI to</b></p> <p>13      <b>Barclays?</b></p> <p>14       A. I do, yes.</p> <p>15       <b>Q. What do you recall about that analysis</b></p> <p>16      <b>or discussion?</b></p> <p>17       A. That obviously we were trying to be as</p> <p>18       specific as possible about not just the assets</p> <p>19       that were on the balance sheet but actually what</p> <p>20       was going to be available for transfer. The</p> <p>21       difference between the balance sheet from a sort</p> <p>22       of accounting or GAPP perspective from a funding</p> <p>23       perspective, was really one of granularity, in</p> <p>24       terms of what has settled and exactly where the</p> <p>25       securities are that are in the repo agreements or</p>
<p style="text-align: right;">Page 88</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       88</p> <p>2       reverse repo agreements. So the effort was to try</p> <p>3       and establish what was exactly available for</p> <p>4       transfer.</p> <p>5       <b>Q. Is it your understanding that the assets</b></p> <p>6       <b>that were listed on the LBI balance sheet, not all</b></p> <p>7       <b>of those ultimately were transferable to Barclays?</b></p> <p>8       A. Yes.</p> <p>9       <b>Q. We had seen earlier in Exhibit 19, which</b></p> <p>10      <b>I think is still before you, if you can just turn</b></p> <p>11      <b>to that --</b></p> <p>12       A. Yes.</p> <p>13       <b>Q. This is a balance sheet I think you told</b></p> <p>14      <b>us of LBI as of September 16, 2008, correct?</b></p> <p>15       A. Yes 15th, I think, I assume.</p> <p>16       <b>Q. And that has a total adjusted assets or</b></p> <p>17       <b>adjusted total assets of 72.6 billion. Do you see</b></p> <p>18       <b>that?</b></p> <p>19       MR. HUME: Objection. Did you ask</p> <p>20       whether this Exhibit 19 was a balance sheet for</p> <p>21       LBI.</p> <p>22       MR. TAMBE: Yes?</p> <p>23       MR. HUME: Was that the question?</p> <p>24       MR. TAMBE: That was not the question,</p> <p>25       no The question was whether it as had a total</p>	<p style="text-align: right;">Page 89</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       89</p> <p>2       adjusted assets of 72.6 billion.</p> <p>3       MR. HUME. Before you asked if it was</p> <p>4       a balance sheet of LBI.</p> <p>5       MR. TAMBE: The record is what it is.</p> <p>6       You have an objection to make, make it, let's move</p> <p>7       on.</p> <p>8       MR. HUME: I think the record is</p> <p>9       misleading now. You asked a question that the</p> <p>10      witness did not understand.</p> <p>11       MR. TAMBE. Unless you are challenging</p> <p>12      the witness I am not sure what that objection is</p> <p>13      all about.</p> <p>14       Let's go back to the Exhibit 19, LBI</p> <p>15       balance sheet adjusted total assets 72.65 billion</p> <p>16       Correct.</p> <p>17       A. I can see that, yes</p> <p>18       <b>Q. And is it your recollection that over</b></p> <p>19       <b>some -- over the course of that week, the week</b></p> <p>20       <b>of September 15, the assets of LBI available for</b></p> <p>21       <b>transfer were less than 72.65 billion?</b></p> <p>22       A. Yes.</p> <p>23       <b>Q. It went down to a number of about</b></p> <p>24       <b>50 billion, correct?</b></p> <p>25       A. I am not sure it ever went as low as</p>

		Page 90	Page 91
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	90	1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	that, but anyway it certainly went down.		2 a representation of the inventory which is both
3	<b>Q. How low did it go in your recollection?</b>		3 reversed in and repo'd out.
4	A. Somewhere between 50 and 60 billion		4 <b>Q. If you can just explain what a matched</b>
5	<b>Q. And part of the reason for that change</b>		5 <b>book is? It is a phrase I have seen in some of</b>
6	from 72 to the 50 to 60 billion range is assets		6 <b>the e-mails. I want to get a better understanding</b>
7	that could not be transferred to Barclays,		7 <b>of what that is.</b>
8	correct?		8 A. The matched book is a financing business
9	MR. HUME: Objection, lacks foundation.		9 where securities are financed on behalf of
10	A. Yes, that is right. I mean, insofar as		10 customers and the matching that is on the other
11	they were transactions that were being settled		11 side, they are financed to the street or with
12	elsewhere, and so the securities would not be		12 other customers, so it is an activity where the
13	available for transfer to Barclays		13 financing should be matched.
14	<b>Q. Going back to Exhibit 140A, the 3-pager,</b>		14 <b>Q. And presumably Lehman are in some spread</b>
15	<b>on the third page of that exhibit, there is an</b>		15 <b>in the course of this matched activity?</b>
16	<b>analysis set forth. Do you see that?</b>		16 A. It should, yes
17	A. I do		17 <b>Q. During the course of this week</b>
18	<b>Q. Do you have an understanding of what</b>		18 <b>of September 15 was the matched book reduced down</b>
19	<b>that analysis is?</b>		19 <b>effectively to zero?</b>
20	A. General, yes.		20 A. As close as possible to zero.
21	<b>Q. Generally, could you tell us what that</b>		21 <b>Q. Were you involved during this time</b>
22	<b>analysis is?</b>		22 <b>period, September 18, September 19, in identifying</b>
23	A. It is a summarization of the inventory		23 <b>or helping to identify those assets of LBI that</b>
24	which has been reversed in from other entities or		24 <b>would be available for transfer to Barclays?</b>
25	repo'd out. The LBI proprietary matched book is		25 A. Yes, particularly in the sort of
		Page 92	Page 93
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	92	1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	18th/19th period.		2 A. Just any of the fixed income for
3	<b>Q. And Mr. Azerad was involved in that</b>		3 example, any of the trading businesses.
4	<b>process as well?</b>		4 <b>Q. So fixed income was a business unit that</b>
5	A. Yes.		5 <b>he would oversee?</b>
6	<b>Q. Was Mr. Martin Kelly involved in that as</b>		6 A. Right. I would think of Gerry as being
7	<b>well?</b>		7 the management accountant and Martin being the
8	A. Yes.		8 entity accountant, if that makes any sense
9	<b>Q. What was Mr. Kelly's position?</b>		9 <b>Q. Not entirely, but that is fine. We will</b>
10	A. Martin was the financial controller so		10 <b>move on. Francis Pearn, P-E-A-R-N?</b>
11	he was the accounting -- he was essentially the		11 A. Yes.
12	accountant for the group, chief accountant for the		12 <b>Q. Who was Francis?</b>
13	group.		13 A. He worked for Gerry.
14	<b>Q. Your co-equal or your subordinate?</b>		14 <b>Q. Were Gerry and Francis involved in this</b>
15	A. We were both direct reports to the CFO.		15 <b>process we talked about, identifying the assets of</b>
16	<b>Q. Gerry Reilly, Gerard Reilly, what was</b>		16 <b>LBI that were in fact transferable to Barclays?</b>
17	<b>his position?</b>		17 A. They were, yes.
18	A. He was the product controller, the head		18 (Exhibit 141A marked for identification)
19	of products control, which is really the business		19 <b>Q. I have handed you an exhibit marked</b>
20	CFO, business units' CFO.		20 <b>Exhibit 141A, which is a cover e-mail with</b>
21	<b>Q. Which business units?</b>		21 <b>a spreadsheet attached to it. If you could</b>
22	A. He actually oversaw all of the business		22 <b>generally look at the cover e-mail and the</b>
23	units.		23 <b>spreadsheet attached, I will ask you some general</b>
24	<b>Q. Give me a description of what you would</b>		24 <b>questions and then maybe some specific ones about</b>
25	<b>consider a business unit?</b>		25 <b>the spreadsheet. Just let me know when you are</b>

<p style="text-align: right;">Page 94</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       94</p> <p>2       done.</p> <p>3       A. Okay.</p> <p>4       <b>Q. Starting with the cover e-mail, reading</b></p> <p>5       <b>the chain from the bottom up, do you recognize</b></p> <p>6       <b>that as an e-mail sent to you from Mr. Hraska?</b></p> <p>7       A. I do.</p> <p>8       <b>Q. Just some terminology I want to get your</b></p> <p>9       <b>understanding on. Mr. Hraska asks you, says:</b></p> <p>10       <b>"We do not have MV of DTC yet but are working</b></p> <p>11       <b>on it".</b></p> <p>12       <b>Is that a reference to market value of</b></p> <p>13       <b>DTC?</b></p> <p>14       A. Correct.</p> <p>15       <b>Q. And DTC is?</b></p> <p>16       A. DTC is the Depository Clearing</p> <p>17       Corporation.</p> <p>18       <b>Q. The next line, there is a reference to</b></p> <p>19       <b>"GFS". What is that a reference to?</b></p> <p>20       A. It is a system that was used to collate</p> <p>21       assets and financing information called the Global</p> <p>22       Financing System</p> <p>23       <b>Q. That is a system at Lehman?</b></p> <p>24       A. That is correct.</p> <p>25       <b>Q. And market value data about securities</b></p>	<p style="text-align: right;">Page 95</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       95</p> <p>2       <b>is entered into that system?</b></p> <p>3       A. No.</p> <p>4       <b>Q. Okay. Describe it?</b></p> <p>5       A. Market data is received from other</p> <p>6       systems. GFS is just an aggregation tool, so</p> <p>7       would source data from settlement systems or from</p> <p>8       other pricing sources and apply that to the</p> <p>9       inventory positions or collateral positions.</p> <p>10       <b>Q. So if Lehman has a collection of</b></p> <p>11       <b>mortgage backed securities, those are valued by</b></p> <p>12       <b>the traders at Lehman on some regular basis, is</b></p> <p>13       <b>that right?</b></p> <p>14       A. That is correct.</p> <p>15       <b>Q. And those values get pulled into GFS</b></p> <p>16       <b>automatically, is that correct?</b></p> <p>17       A. That is correct.</p> <p>18       <b>Q. So the Lehman traders would go in and</b></p> <p>19       <b>ascribe values to those securities, right?</b></p> <p>20       A. That is correct.</p> <p>21       <b>Q. And GFS, do you have to run a GFS</b></p> <p>22       <b>program or does GFS automatically update itself</b></p> <p>23       <b>when new values are entered for particular</b></p> <p>24       <b>collateral?</b></p> <p>25       A. It runs on an overnight basis so it</p>
<p style="text-align: right;">Page 96</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       96</p> <p>2       should pick up all of the most current</p> <p>3       information.</p> <p>4       <b>Q. So if you wanted to track the value</b></p> <p>5       <b>ascribed by Lehman to a particular CUSIP over the</b></p> <p>6       <b>course of that week, September 15 through 22nd, if</b></p> <p>7       <b>I queried the GFS system, it could give me a daily</b></p> <p>8       <b>valuation of that CUSIP?</b></p> <p>9       A. I have no idea</p> <p>10       <b>Q. Who would know the answer to that?</b></p> <p>11       A. That is a technological question on data</p> <p>12       storage and retrieval, so I would speak to someone</p> <p>13       in the technology department</p> <p>14       <b>Q. In terms of figuring out how much money</b></p> <p>15       <b>Lehman could borrow on any day, would you query</b></p> <p>16       <b>the GFS system for values?</b></p> <p>17       A. Yes.</p> <p>18       <b>Q. Who would do that on your behalf? Would</b></p> <p>19       <b>you do that yourself?</b></p> <p>20       A. No.</p> <p>21       <b>Q. Who would do that?</b></p> <p>22       A. Someone within my team, someone junior</p> <p>23       to Robert generally.</p> <p>24       <b>Q. I just want to understand a little about</b></p> <p>25       <b>this spreadsheet that is attached to this cover</b></p>	<p style="text-align: right;">Page 97</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       97</p> <p>2       <b>e-mail, Exhibit 141A. Are you generally familiar</b></p> <p>3       <b>with the format of this spreadsheet?</b></p> <p>4       MR. HUME Object to the form</p> <p>5       A. Generally.</p> <p>6       <b>Q. It is a kind of spreadsheet that was</b></p> <p>7       <b>prepared at Lehman from time to time, is that</b></p> <p>8       <b>right?</b></p> <p>9       A. That is correct.</p> <p>10       <b>Q. I want to get an understanding of some</b></p> <p>11       <b>of the column headings, what your understanding is</b></p> <p>12       <b>of what they mean. Let's use the column title, so</b></p> <p>13       <b>column A, on the first page of the spreadsheet has</b></p> <p>14       <b>a code "PR underscore space ID". Do you see that?</b></p> <p>15       A. Yes.</p> <p>16       <b>Q. What is your understanding of what that</b></p> <p>17       <b>means?</b></p> <p>18       A. It is an identifier.</p> <p>19       <b>Q. A Lehman identifier?</b></p> <p>20       A. I believe so.</p> <p>21       <b>Q. The next column is "CUSIP", and that is</b></p> <p>22       <b>the security identifier, is that right?</b></p> <p>23       A. That is correct.</p> <p>24       <b>Q. The next, column C, is "LB underscore</b></p> <p>25       <b>space rating". Do you see that?</b></p>

<p style="text-align: right;">Page 98</p> <p>1     <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>     98</p> <p>2     A. I do.</p> <p>3     <b>Q. And what is that a reference to?</b></p> <p>4     A. I think that is an amalgum rating,</p> <p>5     default rating from -- for I guess a Lehman</p> <p>6     assigned default rating.</p> <p>7     <b>Q. Columns D, E and F are external rating</b></p> <p>8     <b>agency ratings, is that right?</b></p> <p>9     A. That is correct</p> <p>10    <b>Q. And the next column, G, is titled "Long</b></p> <p>11    <b>underscore space description". Do you see that?</b></p> <p>12    A. I do.</p> <p>13    <b>Q. And that is just a description of the</b></p> <p>14    <b>security?</b></p> <p>15    A. Correct.</p> <p>16    <b>Q. Turn over to the next page, 10320368,</b></p> <p>17    <b>column H, that is just a quantity, "QTY"?</b></p> <p>18    A. Correct.</p> <p>19    <b>Q. And quantity in this setting means what?</b></p> <p>20    A. It means -- I am not sure if they are</p> <p>21    equity securities but for fixed income securities</p> <p>22    it means the notional or principal amounts and</p> <p>23    for -- and the principal, notional or nominal are</p> <p>24    all somewhat interchangeable terms for fixed</p> <p>25    income securities, and for equity securities it is</p>	<p style="text-align: right;">Page 99</p> <p>1     <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>     99</p> <p>2     generally the number of shares.</p> <p>3     <b>Q. Okay, and for fixed income securities</b></p> <p>4     <b>the quantity column would be the principal then</b></p> <p>5     <b>outstanding?</b></p> <p>6     A. Yes.</p> <p>7     <b>Q. The next column?</b></p> <p>8     MR. HUME: Did you finish your answer?</p> <p>9     A. I was going to say it is not necessarily</p> <p>10    the principal outstanding on the security. It is</p> <p>11    the principal balance held by or owned by the</p> <p>12    entity.</p> <p>13    <b>Q. Understood, thank you. Column I?</b></p> <p>14    A. Yes.</p> <p>15    <b>Q. "Price". Do you have an as to what that</b></p> <p>16    <b>column is?</b></p> <p>17    A. That is the price attributed to the</p> <p>18    security.</p> <p>19    <b>Q. If you look down that column, on this</b></p> <p>20    <b>particular page 10320368, you will see a lot of</b></p> <p>21    <b>entries that are less than one, so it is</b></p> <p>22    <b>zero-point something. What is the pricing</b></p> <p>23    <b>convention that you think is being used here?</b></p> <p>24    MR. HUME: Objection, lacks foundation.</p> <p>25    A. I don't know</p>
<p style="text-align: right;">Page 100</p> <p>1     <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>     100</p> <p>2     <b>Q. Generally what pricing convention would</b></p> <p>3     <b>you use in pricing securities in the Lehman</b></p> <p>4     <b>system?</b></p> <p>5     MR. HUME: Objection, the witness has</p> <p>6     not testified that he prices any securities.</p> <p>7     A. I don't know what the pricing convention</p> <p>8     is.</p> <p>9     <b>Q. Next column J: "Price underscore space</b></p> <p>10    <b>source".</b></p> <p>11    A. Yes</p> <p>12    <b>Q. And there is a series of abbreviations</b></p> <p>13    <b>below in that column. The first one says "TMS"?</b></p> <p>14    A. Yes</p> <p>15    <b>Q. Do you have an understanding of what TMS</b></p> <p>16    <b>is?</b></p> <p>17    A. It is a settlement system</p> <p>18    <b>Q. There is a series of entries titled</b></p> <p>19    <b>"MTS", what is that?</b></p> <p>20    A. It is a settlement system.</p> <p>21    <b>Q. These are both Lehman settlement</b></p> <p>22    <b>systems?</b></p> <p>23    A. I don't know if they are Lehman</p> <p>24    proprietary systems or whether they are street</p> <p>25    wide settlement systems but they are settlement</p>	<p style="text-align: right;">Page 101</p> <p>1     <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>     101</p> <p>2     systems used at Lehman.</p> <p>3     <b>Q. And then column K is titled "MV", and</b></p> <p>4     <b>that is market value, correct?</b></p> <p>5     A. That is correct.</p> <p>6     <b>Q. The e-mail on page 1 of Exhibit 141A,</b></p> <p>7     <b>these are all e-mails dated September 19, 2008.</b></p> <p>8     <b>Do you see that?</b></p> <p>9     A. I do.</p> <p>10    <b>Q. Do you recall preparing a spreadsheet</b></p> <p>11    <b>with market valuations for Barclays on the morning</b></p> <p>12    <b>of September 19, 2008?</b></p> <p>13    MR. HUME: Objection to form.</p> <p>14    A. I don't remember preparing that for</p> <p>15    Barclays, no.</p> <p>16    <b>Q. Do you remember preparing that period on</b></p> <p>17    <b>the morning of --</b></p> <p>18    A. I do remember preparing a summary of the</p> <p>19    repo transaction and the values that we saw.</p> <p>20    (Exhibit 142A marked for identification)</p> <p>21    <b>Q. Sir, I have placed before you a document</b></p> <p>22    <b>marked Exhibit 142A. It has two initial pages</b></p> <p>23    <b>which are e-mails and then a spreadsheet attached</b></p> <p>24    <b>to it. Take a moment to look at the document and</b></p> <p>25    <b>let me know when you are done, and I will have</b></p>

<p style="text-align: right;">Page 102</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       102</p> <p>2       questions for you similar to the questions I asked</p> <p>3       you about 141A.</p> <p>4       MR. HUME: I am just going to register</p> <p>5       an objection on the record to the extent that the</p> <p>6       first e-mail in the chain may be privileged and we</p> <p>7       reserve our rights to claw back anything that is</p> <p>8       privileged.</p> <p>9       <b>Q. Are you done?</b></p> <p>10      A. Yes.</p> <p>11      <b>Q. You will see this e-mail chain starts on</b></p> <p>12      <b>the second page of Exhibit 142A with an e-mail</b></p> <p>13      <b>from you to Gerry Reilly?</b></p> <p>14      A. Yes.</p> <p>15      <b>Q. And the file you are sending him with</b></p> <p>16      <b>the e-mail is titled "Inventory Adjustments.xls"</b></p> <p>17      <b>do you see that?</b></p> <p>18      A. Yes.</p> <p>19      <b>Q. This is a series of e-mails on pages one</b></p> <p>20      <b>and two, again dated Friday September 19, 2008.</b></p> <p>21      <b>Do you see that?</b></p> <p>22      A. Yes</p> <p>23      <b>Q. Do you recall preparing an inventory</b></p> <p>24      <b>adjustment file on September 19?</b></p> <p>25      A. Yes.</p>	<p style="text-align: right;">Page 103</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       103</p> <p>2       <b>Q. What is your recollection about that</b></p> <p>3       <b>process of preparing this inventory adjustment?</b></p> <p>4       A. We were trying to identify the</p> <p>5       securities in the repo transaction.</p> <p>6       <b>Q. The repo that had occurred on the night</b></p> <p>7       <b>of the 18th, correct?</b></p> <p>8       A. That is correct.</p> <p>9       <b>Q. And the file that you were forwarding,</b></p> <p>10      <b>"inventory adjustments.xls", would you have</b></p> <p>11      <b>prepared that file?</b></p> <p>12      A. I think that Robert Azerad prepared it</p> <p>13      but I cannot be sure.</p> <p>14      <b>Q. You were involved in the preparation of</b></p> <p>15      <b>the file?</b></p> <p>16      A. Yes, in the reviewing.</p> <p>17      <b>Q. For what purpose were you reviewing the</b></p> <p>18      <b>inventory adjustment file?</b></p> <p>19      A. I was reviewing it to make sure that it</p> <p>20      made sense and looked accurate.</p> <p>21      <b>Q. Just going through the column headings</b></p> <p>22      <b>so I understand what these column headings are,</b></p> <p>23      <b>starting with the third page of the exhibit, last</b></p> <p>24      <b>four digits 5049 on the Bates number, do you see</b></p> <p>25      <b>that?</b></p>
<p style="text-align: right;">Page 104</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       104</p> <p>2       A. Yes.</p> <p>3       <b>Q. So starting with column A, "Account",</b></p> <p>4       <b>and there is a series of codes that appear in that</b></p> <p>5       <b>column. What is your understanding of what</b></p> <p>6       <b>information is contained in that column?</b></p> <p>7       A. I think they are trading accounts.</p> <p>8       <b>Q. These are trading accounts at Lehman?</b></p> <p>9       A. Yes.</p> <p>10      <b>Q. Next column B, "Account name", the name</b></p> <p>11      <b>of the trading account, I take it?</b></p> <p>12      A. Yes.</p> <p>13      <b>Q. The next column is "Adjusted flag". Do</b></p> <p>14      <b>you see that?</b></p> <p>15      A. I do.</p> <p>16      <b>Q. What is that a reference to?</b></p> <p>17      A. I don't know</p> <p>18      <b>Q. Next column over, "Adjustment, [ADJ]</b></p> <p>19      <b>comment." Do you see that?</b></p> <p>20      A. Yes</p> <p>21      <b>Q. Do you have an understanding what that</b></p> <p>22      <b>means?</b></p> <p>23      A. No.</p> <p>24      <b>Q. Next column over, E, "Cost centre", do</b></p> <p>25      <b>you have any understanding what that means?</b></p>	<p style="text-align: right;">Page 105</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       105</p> <p>2       A. Yes, it is the cost centre attached to</p> <p>3       the trading book.</p> <p>4       <b>Q. The next column over, F, is "Lead</b></p> <p>5       <b>account"?</b></p> <p>6       A. Yes.</p> <p>7       <b>Q. What is that a reference to?</b></p> <p>8       A. I think that is just where there is</p> <p>9       trading book roll-ups, so it means that you have</p> <p>10      different layers of trading accounts and then they</p> <p>11      can aggregate into a larger more aggregated</p> <p>12      account.</p> <p>13      <b>Q. Next column over, G, is "Trader name".</b></p> <p>14      <b>then you go over to "DBS entity", column H. What</b></p> <p>15      <b>is that?</b></p> <p>16      A. DBS was the general ledger system, so</p> <p>17      the entity was the annotation for or should have</p> <p>18      been the annotation for the DBS entity.</p> <p>19      <b>Q. What does DBS stand for?</b></p> <p>20      A. I don't know.</p> <p>21      <b>Q. All right. The next page, page 5050</b></p> <p>22      <b>last digits, there is a series of columns for</b></p> <p>23      <b>division, region and then it says "BPM level zero,</b></p> <p>24      <b>one and two". Do you see those columns?</b></p> <p>25      A. Yes.</p>

Page 106			Page 107		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	106	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	107
2	<b>Q. What does BPM stand for?</b>		2	example, if you buy some shares, if you were to	
3	A Business performance measurement.		3	buy some shares today then you would record the	
4	<b>Q. Next column, "Real world Cusip". That</b>		4	fact that you have an economic interest, an	
5	<b>is the security identifier?</b>		5	economic exposure in those shares, but you may not	
6	A. Correct		6	pay for them or settle those for a few days, but	
7	<b>Q. Turn to page 5051. First column is</b>		7	your economic interest and exposure is the trade	
8	<b>"ISIN", again an identifier for the security,</b>		8	date position.	
9	<b>correct?</b>		9	<b>Q. Then you have columns X and Y for clean</b>	
10	A. Correct		10	<b>market price and dirty market price. Do you see</b>	
11	<b>Q. "Q" is "Product". There is a series of</b>		11	<b>that?</b>	
12	<b>codes that appear there. Do you have an</b>		12	A. I do.	
13	<b>understanding of what that column is?</b>		13	<b>Q. Could you briefly describe what clean</b>	
14	A. No		14	<b>market price and dirty market price is?</b>	
15	<b>Q. Then you have columns for product name,</b>		15	A. Clean market price is the trader price	
16	<b>coupon, maturity date, coupon rate, source system.</b>		16	exclusive of the accrued coupon. The dirty market	
17	Let's go over to page 52.		17	price is the traded price inclusive of the accrued	
18	A. Yes		18	coupon.	
19	<b>Q. There is a column entitled "W", "Trade</b>		19	<b>Q. Column Z is "Gross long inventory TD at</b>	
20	<b>date position". What is your understanding of</b>		20	<b>MV"?</b>	
21	<b>what information is contained in that column?</b>		21	A. Yes.	
22	A. The trade date position is a position		22	<b>Q. What is TD at MV?</b>	
23	for accounting purposes, which should represent		23	A. Trade date at market value.	
24	what your ownership interest is. It may not		24	<b>Q. And that calculation is done using clean</b>	
25	correspond to the actual settled position but, for		25	<b>market price, the dirty market price or neither?</b>	
Page 108			Page 109		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	108	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	109
2	A I am not sure.		2	total"?	
3	<b>Q. The next column over, "Long Inlraeo</b>		3	A. Yes	
4	<b>Netdown TD at MV". Do you have an understanding</b>		4	<b>Q. What is that? Is that the buy/sell?</b>	
5	<b>as to that column, column Z?</b>		5	A. No, balance sheet summary.	
6	A. Column Z is the gross long inventory TD		6	<b>Q. And then AG is balance sheet usage?</b>	
7	at MV		7	A. Yes.	
8	<b>Q. I am sorry, column AA, sorry: "Long</b>		8	<b>Q. The prices that appear in X and Y, the</b>	
9	<b>Inlraeo Netdown TD at MV."</b>		9	<b>clean market price and the dirty market price,</b>	
10	A. I actually think that should say --		10	<b>with respect to fixed income securities, would</b>	
11	<b>Q. "Inlraeo"?</b>		11	<b>those be observed trading prices or would those</b>	
12	A. "Inlraeo Netdown", which means that		12	<b>also include indicative or pricing assumptions by</b>	
13	there may be trading books that are both long and		13	<b>traders at Lehman?</b>	
14	short, and this is the first of the netdowns to		14	MR. HUME: Objection, lacks foundation.	
15	reflect offsetting positions.		15	Witness has testified he was not involved in	
16	<b>Q. Then you have a net long column, AB, and</b>		16	pricing.	
17	<b>that is just a net long position, is that right?</b>		17	A. They may be observable. They would	
18	A. That is right.		18	probably be a combination of exchange traded,	
19	<b>Q. And then you have a series of columns,</b>		19	which are observable on assets at closing prices	
20	<b>AC, AD. Over on to the next page, 5053.</b>		20	and trader determined prices and trader input	
21	A. Yes		21	prices	
22	<b>Q. AE, which deals with short positions,</b>		22	<b>Q. Were you aware of any process</b>	
23	<b>correct?</b>		23	<b>on September 19, 2008, where traders at Lehman</b>	
24	A. That is right		24	<b>were marking down positions on that date?</b>	
25	<b>Q. Then you have a column AF, "B/S summary</b>		25	A. I was not, no	

<p style="text-align: center;">Page 110</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        110</p> <p>2        (Exhibit 143A marked for identification)</p> <p>3        <b>Q. I have placed before you a one paged</b></p> <p>4        <b>document marked Exhibit 143A.</b></p> <p>5        A. Yes.</p> <p>6        <b>Q. Do you see that is an e-mail sent by you</b></p> <p>7        <b>to various people at Barclays?</b></p> <p>8        A. I do.</p> <p>9        <b>Q. Sent on Friday, September 19, on or</b></p> <p>10      <b>about -- looks like noon Eastern time?</b></p> <p>11      A. Yes</p> <p>12      <b>Q. And you are sending over a file</b></p> <p>13      <b>captioned "BarCap collateral.xls". Do you see</b></p> <p>14      <b>that?</b></p> <p>15      A. Yes</p> <p>16      <b>Q. And you state in the body of your e-mail</b></p> <p>17      <b>that "This is using our prices". Do you see that?</b></p> <p>18      A. Yes, I do.</p> <p>19      <b>Q. That means using the Lehman prices,</b></p> <p>20      <b>right?</b></p> <p>21      A. That is right.</p> <p>22      <b>Q. And you state that: "It shows less than</b></p> <p>23      <b>BONY file so we may be being conservative." Do you</b></p> <p>24      <b>see that?</b></p> <p>25      A. I do.</p>	<p style="text-align: center;">Page 111</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        111</p> <p>2        <b>Q. And your reference to BONY file is</b></p> <p>3        <b>a reference to the BONY prices, correct?</b></p> <p>4        A. Right.</p> <p>5        <b>Q. The Bank of New York prices, correct?</b></p> <p>6        A. Yes.</p> <p>7        <b>Q. And Bank of New York was the tri-party</b></p> <p>8        <b>provider on the BarCap tri-party agreement,</b></p> <p>9        <b>correct?</b></p> <p>10      A. Yes.</p> <p>11      <b>Q. Do you recall Barclays requesting you to</b></p> <p>12      <b>provide the Lehman marks as separate from the BONY</b></p> <p>13      <b>prices?</b></p> <p>14      A. I don't, no.</p> <p>15      <b>Q. Do you recall any discussions on</b></p> <p>16      <b>Friday September 19 about the BONY prices versus</b></p> <p>17      <b>the Lehman prices, a discussion with Barclays?</b></p> <p>18      A. No, not with Barclays. I do recall --</p> <p>19      there was obviously a tremendous amount of</p> <p>20      complexity in this transaction and the repo</p> <p>21      transaction in particular was very complicated,</p> <p>22      and all that we were trying to do was to establish</p> <p>23      the accuracy of the positions that have</p> <p>24      transferred over and some reference in terms of</p> <p>25      valuations. We had asked for details from</p>
<p style="text-align: center;">Page 112</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        112</p> <p>2        Barclays from their BONY file because they would</p> <p>3        have received an electronic version of the</p> <p>4        tri-party reporting from their tri-party provider,</p> <p>5        so we were just going through the process of</p> <p>6        trying to identify any discrepancies or problems;</p> <p>7        discrepancies in the quantity, problems in terms</p> <p>8        of differences in the assets or in valuations.</p> <p>9        I would say that this was relatively -- this was</p> <p>10      a relatively early cut. As I recall, we only received the</p> <p>11      file shortly before this, you know, that morning, and so it</p> <p>12      was certainly not a complete and finalized piece of work. I</p> <p>13      don't recall anyone from Barclays requesting that we provide</p> <p>14      Lehman values or JP Morgan values. This was just to give</p> <p>15      them some reference to help everyone understand the</p> <p>16      transaction.</p> <p>17      <b>Q. We earlier talked about the effort on</b></p> <p>18      <b>Friday September 19 to identify additional assets</b></p> <p>19      <b>and receivables. Do you recall that?</b></p> <p>20      A. I do</p> <p>21      <b>Q. Do you recall that effort being the</b></p> <p>22      <b>result of concerns about the valuation of the repo</b></p> <p>23      <b>collateral?</b></p> <p>24      A. I don't recall it being explicitly that,</p> <p>25      although I do -- when I spoke about it with Ian it</p>	<p style="text-align: center;">Page 113</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        113</p> <p>2        was clear that one of the considerations was the</p> <p>3        valuations, was going to be the valuations, and</p> <p>4        the mix of collateral, and it was not clear to</p> <p>5        them and to some of the senior managers exactly</p> <p>6        what collateral had been transferred over because,</p> <p>7        as I say, it was a very complicated process, and</p> <p>8        so to have their trading teams review and revalue</p> <p>9        all of that was clearly a necessary part of it.</p> <p>10      <b>Q. And then do you recall the effort being</b></p> <p>11      <b>the result of concerns about preserving the</b></p> <p>12      <b>economic value of the transaction for Barclays?</b></p> <p>13      A. Yes, I mean, it was all linked together</p> <p>14      It is perhaps worth saying, and you can see here</p> <p>15      that there are thousands and thousands of</p> <p>16      securities and they are complicated securities.</p> <p>17      Some of these are not liquid, insofar as there are</p> <p>18      observable market prices, and the complexity with</p> <p>19      reviewing this is tremendous, particularly with</p> <p>20      mortgage securities and structured securities. I</p> <p>21      can certainly think of at least one large position</p> <p>22      that was transferred over, for which there would</p> <p>23      be a tremendous range of valuation, you know,</p> <p>24      potentially ascribed, and I am sure that that</p> <p>25      could be applied to many securities</p>

Page 114			Page 115		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	114	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	115
2	So given that the -- you have to understand that		2	was obviously done for ease of presentation,	
3	this is a transaction where the actual assets being		3	right? It was not presented like this originally.	
4	transferred over is really only being finalized on that		4	A. Yes.	
5	morning, and is still being reviewed, and so we were trying		5	Q. Reviewing this chain of e-mails,	
6	to provide support and assistance insofar as, you know,		6	starting with the earliest e-mail, which is an	
7	determining the securities and a potential value for those.		7	e-mail from you to various people, the subject	
8	But this is not something which had already been reviewed		8	line is: "Delivering other assets to Barclays".	
9	and values confirmed by Barclays, and the BONY system could		9	Do you see that?	
10	also have had problems with valuing some of these		10	A. Ycs.	
11	securities.		11	Q. And is that a reference to this process	
12	<b>Q. The one large position you were talking</b>		12	we talked about, the assets over and above the	
13	<b>about, that is Pine?</b>		13	repo assets?	
14	A. Yes.		14	A. That is correct.	
15	<b>Q. What was Pine?</b>		15	Q. Take a look at the first page of this	
16	A. Pine was a CLO, which is		16	exhibit, the e-mail, page 1, Exhibit 47. At the	
17	a collateralized loan obligation		17	top of the page there is an e-mail from David	
18	<b>Q. I have handed you a document that was</b>		18	Murgio at Weil to two additional people, V Lewkow	
19	<b>previously marked as Exhibit 47. It is about</b>		19	and R Davis. Do you see that?	
20	<b>3 pages of cover e-mails, 4 pages of cover</b>		20	A. I do.	
21	<b>e-mails, and a large spreadsheet. If you can</b>		21	<b>Q. Was it your understanding that</b>	
22	<b>review the e-mails and take a look at the</b>		22	<b>spreadsheet information about the collateral was</b>	
23	<b>spreadsheet, let me know when you are done, and I</b>		23	<b>provided by lawyers for the estate to the lawyers</b>	
24	<b>will ask you some questions about them.</b>		24	<b>for Barclays?</b>	
25	MR HUME: The binding of this exhibit		25	A. Ycs.	
Page 116			Page 117		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	116	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	117
2	<b>Q. There is a reference to BarCap</b>		2	A. It is Fed wireable collateral that was	
3	<b>collateral.xls. Do you see that file?</b>		3	transferred over, Fed wire being the market	
4	A. I do.		4	settlement system for this type of collateral.	
5	<b>Q. That was the same file that you had sent</b>		5	<b>Q. The next line item is DTC074. Do you</b>	
6	<b>over earlier, right, Exhibit 143A?</b>		6	<b>see that?</b>	
7	A. Yes.		7	A. I do.	
8	<b>Q. If you turn to the fifth page, Bates</b>		8	<b>Q. Is that an account or a box at DTC?</b>	
9	<b>number 5138 are the last four digits, do you see</b>		9	A. That is I think an account at DTC.	
10	<b>that calculation up there?</b>		10	<b>Q. A Lehman account?</b>	
11	A. I do, yes.		11	A. Yes.	
12	<b>Q. And it is a total of 49.9 billion. Do</b>		12	<b>Q. The next item is DTC636. Do you see</b>	
13	<b>you see that?</b>		13	<b>that?</b>	
14	A. I do.		14	A. I do.	
15	<b>Q. And that is in the market value column?</b>		15	<b>Q. What is your understanding of what that</b>	
16	A. I see that.		16	<b>is?</b>	
17	<b>Q. And there is four components to that</b>		17	A. That is a different type of DTC account	
18	<b>total. Do you see that?</b>		18	<b>Q. And in the last line item is "TP</b>	
19	A. I do		19	<b>cashed". What does that stand for?</b>	
20	<b>Q. The first is Fed collateral?</b>		20	A. That is the tri-party cash.	
21	A. Yes		21	<b>Q. Was it your understanding on</b>	
22	<b>Q. Do you have an understanding of what</b>		22	<b>Friday September 19 that there was 7 billion</b>	
23	<b>that item is?</b>		23	<b>dollars in cash to be delivered to Barclays?</b>	
24	A. Yes.		24	A. I understood that \$7 billion of cash had	
25	<b>Q. What is it?</b>		25	been given by -- had been deposited by Barclays	

<p style="text-align: right;">Page 118</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        118 2 with JP Morgan and that it was being held by 3 JP Morgan. 4        <b>Q. Was it your understanding of -- I guess</b> 5 these e-mails are all dated September 20, so was 6 it your understanding on September 20, 2008, that 7 the total value of the collateral on the cash in 8 the transaction was 49.9 billion? 9        MR. HUME: Objection, vague and 10 ambiguous as to the value. 11        A This was my view of the repo transaction 12 on the Thursday night, and it was limited to that, 13 just to the repo transaction. 14        <b>Q. So the 15c3 cash, for example, would be</b> 15 <b>in addition to this?</b> 16        A. That is correct, yes, as well as the 17 other unencumbered collateral, as well as other 18 components to the agreement. 19        <b>Q. The other unencumbered collateral, that</b> 20 <b>would be the Schedule B collateral?</b> 21        A. That is what became Schedule B 22 collateral, that is right 23        <b>Q. So that would be added to these items</b> 24 <b>here?</b> 25        A That is right.</p>	<p style="text-align: right;">Page 119</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        119 2        <b>Q. If you go down to page 5139, do you see</b> 3 <b>that?</b> 4        A. I do. 5        <b>Q. There is a column titled "Market value"?</b> 6        A. Yes. 7        <b>Q. Do you know what the source of that</b> 8 <b>market value information was in this spreadsheet?</b> 9        A. I believe that this was the Lehman price 10 market value. 11        (Exhibit 144A marked for identification) 12        <b>Q. I have handed you a one page document</b> 13 <b>entitled Exhibit 144A. Take a moment to look at</b> 14 <b>that and let me know when you are done.</b> 15        A. Yes. 16        <b>Q. Have you seen this document before</b> 17 <b>today?</b> 18        A. I have not, no. 19        <b>Q. Do you remember the information that is</b> 20 <b>contained in this document?</b> 21        A. I do. 22        <b>Q. If you can just go through the</b> 23 <b>components, the components I want to talk to you</b> 24 <b>about are the component that add up to the total</b> 25 <b>securities cash received item. Do you see that?</b></p>
<p style="text-align: right;">Page 120</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        120 2        A. Okay, yes. 3        <b>Q. If you start with the Fed wire</b> 4 securities, that is similar to the Fed collateral 5 entry we were discussing earlier, correct? 6        A. Correct. 7        <b>Q. And the next item is "DTC cash". Do you</b> 8 <b>see that?</b> 9        A. I do. 10       <b>Q. Do you have an understanding as to what</b> 11 <b>that is?</b> 12       A. DTC securities 13       <b>Q. The next item down "DTC cash .3".</b> 14 I assume these are billions? 15       A. Yes. 16       <b>Q. Do you have an understanding of what</b> 17 <b>that line item is?</b> 18       A. I assume it is more DTC securities. 19       <b>Q. The reference to "Repo cash, 7 billion".</b> 20 Do you see that? 21       A. Yes. 22       <b>Q. We have discussed that before?</b> 23       A. That is correct. 24       <b>Q. And then it says "Today DTC collateral".</b> 25 Do you see that?</p>	<p style="text-align: right;">Page 121</p> <p>1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI        121 2        A. I do. 3        <b>Q. And that is 390 million. This is an</b> 4 <b>e-mail dated as of September 19, 2008. Do you</b> 5 <b>have an understanding as to what that means?</b> 6       A. I don't know the specifics. 7       <b>Q. And that rolled up into 52.19 billion</b> 8 <b>total. Do you see that?</b> 9       A. Yes. 10       <b>Q. Again, this does not include, as far as</b> 11 <b>you know, the 15c3 cash, correct?</b> 12       A. That is correct. 13       <b>Q. Do you know whether this includes</b> 14 <b>Schedule B?</b> 15       A. I would presume that the "Today DTC 16 collateral" includes some of what became the 17 Schedule B collateral. 18       <b>Q. When you look below the total securities</b> 19 <b>cash received there is a repo cash amount. Do you</b> 20 <b>see that?</b> 21       A. Yes. 22       <b>Q. And that is 45 billion?</b> 23       A. Yes. 24       <b>Q. So the differential between the value of</b> 25 <b>the securities and cash received and the repo cash</b></p>

	Page 122	Page 123
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	122
2	amount is listed as excess collateral there,	
3	right?	
4	A That is right.	
5	<b>Q. That is \$7 billion?</b>	
6	A. Yes.	
7	<b>Q. So that is the excess of market value</b>	
8	over cash paid for the repo?	
9	A. That is, you know, what it looks like.	
10	<b>Q. And this, as far as you can tell, the</b>	
11	folks who have sent this e-mail around are all	
12	Barclays folks, right?	
13	A. Yes	
14	<b>Q. Not former Lehman people, is that right?</b>	
15	A. No	
16	<b>Q. And are they also still at Barclays?</b>	
17	A. I have no idea.	
18	<b>Q. Do you know any of these names, Gerry</b>	
19	LaRocca?	
20	A. I do.	
21	<b>Q. Does Gerry work with you?</b>	
22	A. No	
23	<b>Q. Not in your department or group?</b>	
24	A. No.	
25	<b>Q. Stephen King?</b>	
	Page 124	Page 125
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	124
2	Kelly to Robert Azerad, Blackwell and Beldner,	
3	right. Who was Brett Beldner?	
4	A. He is an accountant who worked for	
5	Martin Kelly.	
6	<b>Q. He was at Lehman, right?</b>	
7	A. He was.	
8	<b>Q. Is he now at Barclays?</b>	
9	A. I don't know.	
10	<b>Q. You are copied on that e-mail at the</b>	
11	bottom of page 2, right?	
12	A. Yes.	
13	<b>Q. If you go over to page 1 of this</b>	
14	Exhibit 145A, it is the e-mail at the bottom of	
15	the page which is an e-mail from you to a group of	
16	people. Do you see that?	
17	A. Yes.	
18	<b>Q. And you have got sort of two items in</b>	
19	your e-mail, correct?	
20	MR. HUME: Which e-mail?	
21	<b>Q. The bottom of page 1. Are you with me,</b>	
22	<b>Mr. Tonucci?</b>	
23	A. What are the two items?	
24	<b>Q. The first item is "I think they have</b>	
25	..." and you correct yourself, "42.9 billion of	

<p style="text-align: right;">Page 126</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       126</p> <p>2 of September 20 those were the sort of three</p> <p>3 components you were thinking of as comprising the</p> <p>4 balance sheet. Correct?</p> <p>5       MR. HUME: Objection, lacks foundation.</p> <p>6       A. Those were the components that I was</p> <p>7 aware of, so I was not the accountant and I was</p> <p>8 not on the negotiation team and I was not aware of</p> <p>9 any other entries that may be being made for</p> <p>10 example on the liability side or for other assets</p> <p>11 over and above these.</p> <p>12       <b>Q. Just on a net basis, the three</b></p> <p>13 <b>components that you identified at the bottom of</b></p> <p>14 <b>page 1, there is a net of 4 billion on the repo</b></p> <p>15 <b>piece, correct?</b></p> <p>16       A. If you are calculating the 42.9 minus</p> <p>17 the 38.</p> <p>18       <b>Q. Yes.</b></p> <p>19       A. That is the calculation you are doing?</p> <p>20       <b>Q. That is the calculation. It is actually</b></p> <p>21 <b>4.9.</b></p> <p>22       A. That is correct.</p> <p>23       <b>Q. You add to that the 1.9 of boxed assets?</b></p> <p>24       A. Yes.</p> <p>25       <b>Q. With no offsetting liability against</b></p>	<p style="text-align: right;">Page 127</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       127</p> <p>2 that 1.9?</p> <p>3       MR. HUME: Objection, lacks foundation.</p> <p>4       A. That is not clear to me. I can only</p> <p>5 tell you the asset side that I was aware of.</p> <p>6       <b>Q. So the asset side you have net assets on</b></p> <p>7 <b>the repo of 4.9, 1.9 on the box assets and then</b></p> <p>8 <b>a billion on the cash receivable?</b></p> <p>9       MR. HUME Objection, vagueness, vague</p> <p>10 and ambiguous.</p> <p>11       MR. TAMBE: Right?</p> <p>12       A. You can read it.</p> <p>13       <b>Q. And that is a total of what, about</b></p> <p>14 <b>7.9 billion?</b></p> <p>15       MR. HUME: Objection, lacks foundation.</p> <p>16 You are just asking him to do the maths?</p> <p>17       A. You are just asking me to add up?</p> <p>18       <b>Q. 7.8 billion --</b></p> <p>19       A. Yes.</p> <p>20       <b>Q. Were you aware of any liabilities that</b></p> <p>21 <b>offset that 7.8 billion dollars of net assets</b></p> <p>22 <b>delivered to Barclays?</b></p> <p>23       A. I knew there were some liabilities.</p> <p>24       <b>Q. What magnitude?</b></p> <p>25       A. I was not sure but I knew that there</p>
<p style="text-align: right;">Page 128</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       128</p> <p>2 were liabilities for compensation and for other</p> <p>3 payments, services and so on that, you know, were</p> <p>4 not part of the numbers that I was putting</p> <p>5 together.</p> <p>6       (Exhibit 146A marked for identification)</p> <p>7       <b>Q. I have handed you a 3-page document</b></p> <p>8 <b>marked Exhibit 146A, an e-mail chain. Let me know</b></p> <p>9 <b>when you are done reviewing it.</b></p> <p>10       A. Yes.</p> <p>11       <b>Q. Do you recognize this as a series of</b></p> <p>12 <b>e-mails between folks at Lehman about a transfer</b></p> <p>13 <b>of collateral to BarCap?</b></p> <p>14       A. Yes</p> <p>15       <b>Q. And this is a series of e-mails</b></p> <p>16 <b>dated September 22, 2008. Correct?</b></p> <p>17       A. Yes</p> <p>18       <b>Q. And it is early in the morning, right,</b></p> <p>19 <b>6:00 or 7:00 am?</b></p> <p>20       A. Yes.</p> <p>21       <b>Q. And is that before the clarification</b></p> <p>22 <b>letter is signed?</b></p> <p>23       MR. HUME: Objection, lacks foundation</p> <p>24 The witness has testified he didn't review it that</p> <p>25 week.</p>	<p style="text-align: right;">Page 129</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       129</p> <p>2       A. I can't say</p> <p>3       <b>Q. Do you recall there being some urgency</b></p> <p>4 <b>on the morning of September 22 to getting answers</b></p> <p>5 <b>to this question, "queueing up delivery to BarCap"?</b></p> <p>6       MR. HUME Objection, vague.</p> <p>7       A. I don't really know but, you know,</p> <p>8 I would say that everyone was focused on doing</p> <p>9 their job.</p> <p>10       <b>Q. And what was your job that morning?</b></p> <p>11       A. Well, we were trying to close the</p> <p>12 transaction in an orderly way.</p> <p>13       <b>Q. There is an e-mail at the bottom of page</b></p> <p>14 <b>1 over to page 2 from Monty Forrest to you and</b></p> <p>15 <b>Robert Azerad. Do you see that e-mail?</b></p> <p>16       A. Yes</p> <p>17       <b>Q. And his first numbered point, which is</b></p> <p>18 <b>at the bottom of page 1 over on to page 2 states:</b></p> <p>19       <b>"What was the final agreed upon list (our</b></p> <p>20 <b>version or the version after Robert took out and</b></p> <p>21 <b>re-marked Lehman paper.)"</b></p> <p>22       <b>Do you see that?</b></p> <p>23       A. Yes.</p> <p>24       <b>Q. Do you understand the reference to</b></p> <p>25 <b>re-marked Lehman paper?</b></p>

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	130	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	131
2	A. Well, just I think it is more relevant		2	A. Yes.	
3	that he just removed the Lehman paper. There was		3	<b>Q. And you are seen as a copy on that</b>	
4	some -- in the original unencumbered list there		4	<b>e-mail?</b>	
5	was some securities which were Lehman issued.		5	A. Yes.	
6	<b>Q. It is not your understanding that there</b>		6	<b>Q. It appears from that e-mail that he is</b>	
7	<b>was a mark down of Lehman paper by Robert in that</b>		7	<b>sending over to you the BONY valuation of the</b>	
8	<b>list?</b>		8	<b>collateral, is that right?</b>	
9	A. That is not what it refers to		9	A. Sending over the BONY file, which	
10	(Exhibit 147A marked for identification)		10	includes the valuation, but it obviously also	
11	<b>Q. I have handed you a 2-page document</b>		11	includes the details around nominal and	
12	<b>marked Exhibit 147A, an e-mail chain. Please</b>		12	securities.	
13	<b>review it and let me know when you are done.</b>		13	<b>Q. There is a reference to BONY market</b>	
14	A. Yes.		14	<b>value of approximately 45MM. Do you see that?</b>	
15	<b>Q. And you recognize this as a series of</b>		15	A. Yes.	
16	<b>e-mails, again dated September 22, 2008?</b>		16	<b>Q. He was referring to a 45 billion-dollar</b>	
17	A. Yes.		17	<b>value, correct?</b>	
18	<b>Q. And these are additional e-mails about</b>		18	A. I assume so.	
19	<b>the financing facility?</b>		19	<b>Q. You will see on page 1 of the e-mail</b>	
20	A. Additional e-mails about the securities		20	<b>a reference to "fast reconciliation". Do you see</b>	
21	that were transferred over and confirmation of		21	<b>that?</b>	
22	those securities.		22	A. I do.	
23	<b>Q. On page 2 of this exhibit, the body of</b>		23	<b>Q. Was that sort of the beginning of the</b>	
24	<b>the e-mail from Jasen Yang to Robert Azerad and</b>		24	<b>reconciliation process you talked about before?</b>	
25	<b>James Hraska. Do you see that?</b>		25	A. We had tried to do an initial	
Page 132			Page 133		
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	132	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	133
2	reconciliation on the Friday. This was		2	A. Yes.	
3	a subsequent reconciliation and at a more detailed		3	<b>Q. And you understand that to be</b>	
4	level Jasen had identified what he saw as some		4	<b>a reference to the 5 billion-dollar discount that</b>	
5	discrepancies, and we were trying to resolve		5	<b>we talked about earlier?</b>	
6	whether those discrepancies existed, principally		6	MR. HUME: Objection, lacks foundation.	
7	in the securities that were transferred over and		7	A. I understand it to be a reference to the	
8	the nominal value of those securities.		8	discount on purchase, so I would have linked it to	
9	(Break from 10:37 to 10:55 am.)		9	that \$5 billion.	
10	MR. TAMBE: Mr. Tonucci, I have placed		10	<b>Q. Then the next sentence reads:</b>	
11	before you a document marked Exhibit 126. Can you		11	<b>"Defaulting on repo could be the best as</b>	
12	take a moment to look at the e-mail chain and let		12	<b>discounts could be taken from the haircut."</b>	
13	me know when you are done.		13	<b>Do you see that?</b>	
14	A. Yes		14	A. Yes.	
15	<b>Q. Starting with the e-mail at the bottom</b>		15	<b>Q. Do you remember discussing with anyone</b>	
16	<b>of the page, it is from Gerry Reilly to Ian Lowitt</b>		16	<b>at Lehman defaulting on the repo as a way of</b>	
17	<b>and Michael Gelband. You are copied on it. Do</b>		17	<b>providing the discount to Barclays?</b>	
18	<b>you see that?</b>		18	A. Yes.	
19	A. I do.		19	<b>Q. With whom did you discuss that?</b>	
20	<b>Q. There are three numbered items in that</b>		20	A. I think it was with Ian and with Gerry,	
21	<b>e-mail. Do you see that?</b>		21	perhaps Martin Kelly as well.	
22	A. Yes.		22	<b>Q. And then in Gerry's e-mail at the bottom</b>	
23	<b>Q. The third item reads: "Not clear on the</b>		23	<b>of this e-mail chain on exhibit 126 he says:</b>	
24	<b>amount of blocked discount or how we make it</b>		24	<b>"If not that then we need to give business an</b>	
25	<b>happen." Do you see that?</b>		25	<b>allocation of block discount so they can mark down the</b>	

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	134	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	135
2	books tonight."		A Yes.	
3	Do you see that?		Q. Was it your understanding during this	
4	A Yes.		week of 15 September that there were assets that	
5	Q. Do you recall if that ever happened,		Barclays was picking and choosing as to which	
6	whether there was an allocation of a block		assets it was prepared to purchase?	
7	discount?		A. That is right.	
8	A. I don't know		MR. HUME: Objection.	
9	Q. Does the phrase "block discount" have		A. That was my understanding	
10	any meaning to you?		Q. And from whom did you get that	
11	A. Not really.		understanding?	
12	Q. Other than what we have talked about		A. I can't recall but I understood that	
13	here?		they were not going to be buying all the assets.	
14	A. Other than in this context.		Q. Was it your understanding that there was	
15	Q. The next e-mail up, from Ian Lowitt to		a change or an evolution in the transaction where	
16	Gerry Reilly and Michael Gelband talks about		it went from being all assets to only some assets?	
17	"shrinking down matched book". Do you see that?		A. No, I understood that it was never all	
18	A. I do.		assets.	
19	Q. Do you understand that to be a reference		Q. Did you have an understanding as to who	
20	to what we talked about before, about the matched		was making the decisions as to which assets it	
21	book being shrunk down to zero?		would be?	
22	A. Yes.		A. It was -- I think it was the negotiation	
23	Q. The first bullet point in Gerry Reilly's		team, Barclays and Lehman negotiation team.	
24	e-mail at the bottom of the page talks about the		Q. Was it your understanding that it was	
25	option rate book. Do you see that?		Barclays making the decisions?	
	Page 136		Page 137	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	136	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	137
2	A. Well, they were the buyers so they would		A. I mean, I have only seen this e-mail in	
3	by extension have the final decision on what		the deposition process and I have not spoken to	
4	assets are bought		Eric and I was not part of the negotiation team.	
5	Q. I have placed before you a document		I am not sure what Eric was seeing. Eric was also	
6	marked Exhibit 127. It is another branch in the		not -- you know, he was running the credit book so	
7	e-mail chain that we were looking at before in		I don't know if he would have seen all parts of	
8	126. Let me know when you are done with the		this process.	
9	document.		Q. Basically, one way or the other, you	
10	A. Yes.		don't know whether what Eric says here is right?	
11	Q. So it starts with the same Gerry Reilly		A. That is right.	
12	e-mail at the bottom but there is a different		(Exhibit 148A marked for identification)	
13	e-mail at the top. At the top of the document		Q. I have handed you a 2-page document	
14	there is an e-mail from Eric Felder to various		marked Exhibit 148A. Let me know when you are	
15	e-mail at Lehman. Do you see that?		done with it.	
16	A. Yes.		A. Okay.	
17	Q. And Eric says:		Q. In the top e-mail on this chain of	
18	"The Barclays guys chose the assets. We did not		e-mails from Gerry Reilly to Martin Kelly and	
19	have anything to do with it."		Daniel Flores, I want you to focus on that e-mail.	
20	Do you see that?		Do you have it there?	
21	A. Yes.		A. I do.	
22	Q. And that was consistent with your		Q. You are not shown as a copy on any of	
23	understanding of how the assets were picked --		these e-mails. Can I ask you about a phrase that	
24	MR. HUME: Objection to the lack of		is used in this e-mail. The third sentence of	
25	foundation. Mr. Tonucci is not on that e-mail		that e-mail, Gerry Reilly's e-mail states that:	

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	138	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>
2	"Purchase will be at a fixed discount on the		139
3	assets that remain to reflect the bulk size of the		
4	purchase".		
5	Do you see that?		
6	A. I do.		
7	<b>Q. Did anyone ever describe for you the</b>		
8	<b>reason for the discount being the bulk size of the</b>		
9	<b>purchase?</b>		
10	A. I don't recall that, no.		
11	<b>Q. Does that phrase have any meaning to</b>		
12	<b>you?</b>		
13	A. I have not seen it before.		
14	<b>Q. Then the next sentence in Gerry Reilly's</b>		
15	<b>e-mail starts off by saying: "We can track our</b>		
16	<b>PL..." Is that profit and loss?</b>		
17	A. Yes.		
18	<b>Q. "... by assets category, which gives</b>		
19	<b>some indication of how much we have moved the</b>		
20	<b>marks". Do you see that?</b>		
21	A. Yes.		
22	<b>Q. Do you understand the reference to</b>		
23	<b>"moving the marks"?</b>		
24	A. Yes. Can I give you just a bit of		
25	context, because I think that you are sort of		
Page 140		Page 141	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	140	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>
2	this week the amount of trading activity for these		141
3	particular securities and for these traders was		
4	limited, so really it is a matter of sort of		
5	interpretation of where the market is.		
6	You have to add to that the fact that		
7	the holding company had filed and so the coverage		
8	of the desks was also impaired. I don't think		
9	that there would be every trader turning up and		
10	re-marking his book. So there was great		
11	difficulty in just creating the P&L and in being		
12	able to track the movements. So that sort of		
13	added to the complexity here		
14	So my interpretation here is that the		
15	amount that we have moved the marks is really just		
16	a reference to the traders re-marking their books		
17	because of this, because of what is being observed		
18	in the market, and it probably was the most		
19	volatile week in the market in the last nearly		
20	100 years. So very, very difficult, very		
21	difficult process, and we were not getting good		
22	P&L's on a daily basis as a result. It was much		
23	more complicated than was typically the case, and		
24	on a typical day the process was complicated, so		
25	this was really extraordinarily difficult to		

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	142	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>
2	the market price movements.		away and there would effectively be a sale of the
3	<b>Q. I have handed you a document marked as</b>		asset?
4	<b>Exhibit 71B. It is an e-mail exchange between</b>		MR. HUME: Objection.
5	<b>yourself and Alastair Blackwell. Do you see that?</b>		A. That is correct. It would become
6	A. Yes		a sale.
7	<b>Q. It is on Friday, September 19, 2008. Do</b>		(Exhibit 149A marked for identification)
8	<b>you see that?</b>		<b>Q. I have handed you a 2-page document</b>
9	A. Yes		<b>marked Exhibit 149A. Let me know when you are</b>
10	<b>Q. At the top of the e-mail Alastair asks</b>		<b>done reviewing that document.</b>
11	<b>you: "Putting the repo into default is my</b>		A. Yes.
12	<b>conversion?" Do you see that?</b>		<b>Q. Have you ever seen this document before</b>
13	A. Um hum.		<b>today?</b>
14	<b>Q. Do you have a recollection of having</b>		A. No.
15	<b>a discussion with Alastair about putting the repo</b>		<b>Q. You know who Bob Diamond is, right?</b>
16	<b>into default on Friday, September 19?</b>		A. Yes.
17	A. I don't, no.		<b>Q. Who is he?</b>
18	<b>Q. Any understanding of the phrase "my</b>		A. He is the President of Barclays.
19	<b>conversion", what he meant by that?</b>		<b>Q. Do you know who Michael Klein is?</b>
20	A. My interpretation would be that his area		A. Yes.
21	would have to rebook the repo, convert the repo		<b>Q. Who is Michael Klein?</b>
22	into a sale transaction.		A. He is someone who was involved in the
23	<b>Q. And your understanding was that</b>		transaction.
24	<b>a default on the repo really converted what was a</b>		<b>Q. Is he someone that you dealt with during</b>
25	<b>two-leg transaction; the repurchase leg would go</b>		<b>that week of September 15?</b>
Page 144		Page 145	
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	144	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>
2	A. Yes, I spoke to him. I dealt with him		speculation.
3	you know, just through that week. I don't think I		A. I don't know what would go into that
4	have seen him since then.		specifically.
5	<b>Q. Describe your interactions with</b>		<b>Q. Was it your understanding on Friday or</b>
6	<b>Mr. Klein during that week. What were you</b>		<b>Saturday of that week that Lehman had provided an</b>
7	<b>speaking with him about?</b>		<b>additional \$3 billion of value to Barclays?</b>
8	A. Predominantly it was clarification of		MR. HUME: Objection, lacks foundation.
9	the assets, so Michael was asking for various		Witness has testified he was not negotiating the
10	points, just details of the sort of asset		economics of the deal.
11	schedules and some of the other transfers. That		A. I can't really answer that, I don't
12	is all I can really recall.		know.
13	<b>Q. Was he part of the conversations on</b>		<b>Q. But we have talked about a couple of</b>
14	<b>Friday, September 19, about locating additional</b>		<b>items of additional value on Friday, September 19,</b>
15	<b>assets and value for Barclays?</b>		<b>right?</b>
16	A. I didn't speak to him on that, sorry, I		A. We have, but we have also talked about
17	don't know.		the price volatility and the lack of certainty
18	<b>Q. In his e-mail to Bob Diamond on</b>		around the actual assets that were being
19	<b>Saturday, September 20, 2008, Mike says: "Great</b>		transferred, and just the difficulty in
20	<b>day. We clawed back 3 billion more of value of</b>		establishing values. So I mean I wouldn't sort
21	<b>the transaction". Do you see that?</b>		of, you know, I wouldn't sort of describe this as
22	A. I do see that.		just additive to the original transaction. It was
23	<b>Q. Any understanding as to what he is</b>		clearly changing.
24	<b>referring to in the 3 billion more of value?</b>		<b>Q. And among the items that were added was</b>
25	MR. HUME: Objection, calls for		<b>1.9 billion in Schedule B, is that right?</b>

<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       146</p> <p>2       MR. HUME: Objection, mischaracterizes</p> <p>3       his testimony.</p> <p>4       <b>Q. Right?</b></p> <p>5       MR. HUME. Objection.</p> <p>6       A. Can I clarify your question, please?</p> <p>7       <b>Q. You can answer my question.</b></p> <p>8       A. I am asking you what are you referring</p> <p>9       to when you are saying "in addition there was". I</p> <p>10      am not sure what you mean In addition to what?</p> <p>11      <b>Q. I have talked about the components at</b></p> <p>12      <b>least that you have in your e-mail, where you</b></p> <p>13      <b>recap the opening balance sheet, right, you have</b></p> <p>14      <b>the repo component and then you have 1.9 billion</b></p> <p>15      <b>for what we have talked about, became Schedule B,</b></p> <p>16      <b>and then you had another billion dollars of the</b></p> <p>17      <b>15c3 receivables?</b></p> <p>18      A. That is correct.</p> <p>19      <b>Q. And the 1.9 and the 1 is about</b></p> <p>20      <b>\$2.9 billion, right?</b></p> <p>21      A. That is correct.</p> <p>22      <b>Q. And that was additional value over and</b></p> <p>23      <b>above the repo, correct?</b></p> <p>24      MR. HUME: Objection.</p> <p>25      A. Additional assets over and above the</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       147</p> <p>2       repo assets that were transferred on the Thursday</p> <p>3       night.</p> <p>4       <b>Q. We have touched on this briefly, about</b></p> <p>5       <b>the \$7 billion in cash that had been transferred</b></p> <p>6       <b>from Barclays to JP Morgan, is that right?</b></p> <p>7       A. That is correct.</p> <p>8       <b>Q. On Friday, the 19th?</b></p> <p>9       A. That was transferred on the Thursday,</p> <p>10      the 18th.</p> <p>11      <b>Q. On Thursday the 18th, just using that as</b></p> <p>12      <b>a springboard, can you describe for me generally</b></p> <p>13      <b>the interactions between Lehman and JP Morgan</b></p> <p>14      <b>during that week, so that week of the 15th on</b></p> <p>15      <b>through the 22nd?</b></p> <p>16      A. Yes. JP Morgan was continuing to</p> <p>17      provide clearance for LBI, and so there were</p> <p>18      discussions through the week about that activity</p> <p>19      related to that clearance activity. You know,</p> <p>20      I spoke to them a number of times about all</p> <p>21      related to clearance activity, tri-party and</p> <p>22      securities clearance.</p> <p>23      <b>Q. I think you described that one of the</b></p> <p>24      <b>liquidity issues that arose on the 12th, the</b></p> <p>25      <b>Friday the 12th, was a demand for additional</b></p>
<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       148</p> <p>2       <b>collateral by JP Morgan?</b></p> <p>3       A. That is correct.</p> <p>4       <b>Q. And that presented Lehman with some</b></p> <p>5       <b>difficulties?</b></p> <p>6       A. It was a very large cash request, so an</p> <p>7       unusual size and difficult, a difficult request to</p> <p>8       fulfill, particularly in the way that they -- the</p> <p>9       timing that they wanted it.</p> <p>10      <b>Q. In terms of dealing with JP Morgan</b></p> <p>11      <b>during the week of the 15th through the 22nd, did</b></p> <p>12      <b>you experience any other difficulties or</b></p> <p>13      <b>impediments in dealing with them?</b></p> <p>14      A. They were certainly not being very</p> <p>15      cooperative</p> <p>16      <b>Q. Can you describe to me what you mean by</b></p> <p>17      <b>that?</b></p> <p>18      A. Really they were just not being very</p> <p>19      cooperative.</p> <p>20      <b>Q. Anything specific you recall?</b></p> <p>21      A. No, general. I don't think there is</p> <p>22      anything specific that I would point to, just</p> <p>23      generally not very cooperative, not providing</p> <p>24      a lot of information, you know, not on a timely</p> <p>25      basis, not releasing transactions on a timely</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       149</p> <p>2       basis, you know, those types of things.</p> <p>3       <b>Q. Do you recall any difficulty in dealing</b></p> <p>4       <b>with JP Morgan over the \$7 billion in cash either</b></p> <p>5       <b>on 19 September or thereafter?</b></p> <p>6       A. I absolutely never spoke to them about</p> <p>7       that</p> <p>8       <b>Q. Did other people describe to you their</b></p> <p>9       <b>interactions with JP Morgan about that item?</b></p> <p>10      A. Not really.</p> <p>11      <b>Q. Are you aware of any settlement</b></p> <p>12      <b>agreement between JP Morgan and Barclays over the</b></p> <p>13      <b>subject matter of this proceeding?</b></p> <p>14      A. I am. It was a matter of I think court</p> <p>15      record and it was publicly disclosed. I am not</p> <p>16      aware of any details over and above those that</p> <p>17      were publicly disclosed.</p> <p>18      <b>Q. What are you aware about -- scratch</b></p> <p>19      <b>that. What is your knowledge about the settlement</b></p> <p>20      <b>between JP Morgan and Barclays?</b></p> <p>21      A. That there was a component of cash and</p> <p>22      there were a selection of securities that were</p> <p>23      transferred. I have not seen the securities that</p> <p>24      were transferred over but I was aware that that</p> <p>25      was the sort of composition, and I think</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	150	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	151
2	subsequently I may have seen some asset level cut		2	<b>Q. I have handed you a document marked</b>	
3	of that, because of the entities in which it was		3	<b>Exhibit 150A. Take a moment to read that and let</b>	
4	going to get booked in in Barclays, but it is very		4	<b>me know when you are done.</b>	
5	sort of general information		5	A. I have read it.	
6	<b>Q. In the time period after you joined</b>		6	<b>Q. I think the bottom e-mail is one we have</b>	
7	<b>Barclays, were you involved at all in doing any</b>		7	<b>seen on another exhibit. It is the e-mail from</b>	
8	<b>analytics or assisting with that settlement?</b>		8	<b>Martin Kelly to certain people?</b>	
9	A. No.		9	A. Ycs.	
10	<b>Q. Were you asked to do any valuations of</b>		10	<b>Q. Requesting the opening balance sheet.</b>	
11	<b>what had been transferred to Barclays in</b>		11	<b>Your response in the fourth paragraph, an e-mail</b>	
12	<b>connection with that settlement?</b>		12	<b>which begins: "I think the reversions within the</b>	
13	A. No		13	<b>asset transferred." Do you see that?</b>	
14	<b>Q. Have you seen any documentation about</b>		14	A. Yes.	
15	<b>the settlement?</b>		15	<b>Q. Further down in that paragraph you refer</b>	
16	A. No.		16	<b>to treating something as a "broken repo". What</b>	
17	<b>Q. Do you know who would have done the</b>		17	<b>did you mean by a "broken repo"?</b>	
18	<b>analytics in connection with that settlement?</b>		18	A. A defaulted repo	
19	A. I would imagine that it would have been		19	<b>Q. And there is a reference to cleaning up</b>	
20	the accounting team, the finance team, so it could		20	<b>with the clients at the other side, and that is</b>	
21	be Martin Kelly, someone in Martin Kelly's team.		21	<b>what, reconciling -- what did you mean by that?</b>	
22	MR. HUME: Don't speculate.		22	A. Clean up with a broken repo or defaulted	
23	A. But I don't know. I mean that is		23	repo is the rebooking of that transaction as	
24	speculative.		24	a purchase or as a sale.	
25	(Exhibit 150A marked for identification)		25	(Exhibit 151A marked for identification)	
Page 152			Page 153		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	152	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	153
2	<b>Q. I have handed you a 3-page document</b>		2	A. Not really. It would be more people,	
3	<b>marked Exhibit 151A. Let me know when you are</b>		3	someone from the regulatory accounting or	
4	<b>done reading it.</b>		4	compliance group.	
5	A. Yes.		5	<b>Q. Do you have an understanding of the</b>	
6	<b>Q. Once again this is an e-mail chain that</b>		6	<b>spreadsheet that is attached as page 3 of this</b>	
7	<b>begins with the request for the opening balance</b>		7	<b>exhibit?</b>	
8	<b>sheet at the bottom of page 1 over to page 2. Do</b>		8	A. I do.	
9	<b>you see that?</b>		9	<b>Q. What is your understanding of what that</b>	
10	A. I do.		10	<b>spreadsheet is --</b>	
11	<b>Q. At the top of page 1 is an e-mail from</b>		11	A. It is a calculation of the 15c3 and the	
12	<b>Robert Azerad to you and others. Do you see that?</b>		12	requirement on different days	
13	A. I do.		13	<b>Q. And was this spreadsheet or this</b>	
14	<b>Q. And it refers to the details of the</b>		14	<b>analysis prepared to identify the cash that was</b>	
15	<b>15c3, both customer and PAIB. Do you see that?</b>		15	<b>available to be transferred?</b>	
16	A. I do see that, yes.		16	A. Yes, that is right, it was part of that	
17	<b>Q. What is your understanding of what PAIB</b>		17	work	
18	<b>stands for?</b>		18	<b>Q. The next e-mail down from -- the second</b>	
19	A. I thought it was to do with other		19	<b>e-mail down from the top of the page is an e-mail</b>	
20	brokers.		20	<b>from you to Robert Azerad and others, identifying</b>	
21	MR. HUME: Again, don't speculate if you		21	<b>the 15c3 cash as a component to be added to the</b>	
22	are not sure.		22	<b>balance sheet. Right?</b>	
23	A. It is not really my area of knowledge.		23	MR. HUME. Objection to the phrase	
24	<b>Q. Would that be Mr. Azerad's area of</b>		24	"added to the balance sheet".	
25	<b>knowledge?</b>		25	A. The mail was to include within the	

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	154	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	155
2	opening balance sheet the receivable related to		2	top, which I was not included on.	
3	15c3.		3	(Exhibit 153A marked for identification)	
4	<b>Q. In that same e-mail you have questions</b>		4	<b>Q. I have handed you a 2-page document</b>	
5	<b>for Dan. I assume that is Dan Fleming?</b>		5	<b>marked Exhibit 153A. Let me know when you are</b>	
6	A. Correct.		6	<b>done looking at it.</b>	
7	<b>Q. And you have questions about the</b>		7	A. Yes.	
8	<b>transferring over of collateral that was locked up</b>		8	<b>Q. The first page is two e-mails, one from</b>	
9	<b>for 15c3 needs. Do you see that?</b>		9	<b>Robert Azerad to you and others. Do you see that?</b>	
10	A. Yes, I do		10	A. I do.	
11	<b>Q. Do you know if that collateral was</b>		11	<b>Q. Attaching an opening balance sheet?</b>	
12	<b>transferred over to Barclays?</b>		12	A. I do.	
13	A. I don't believe it was		13	<b>Q. And the top e-mail, I guess, is that</b>	
14	<b>Q. Do you know what happened to that</b>		14	<b>document being forwarded to Brett Beldner?</b>	
15	<b>collateral?</b>		15	A. Yes.	
16	A. I don't		16	<b>Q. And the document attached is the asset</b>	
17	(Exhibit 152A marked for identification)		17	<b>side of the balance sheet, correct?</b>	
18	<b>Q. I have handed you a 3-page document</b>		18	A. Correct.	
19	<b>marked 152A. It is another e-mail chain. Would</b>		19	<b>Q. And you were involved in preparing this,</b>	
20	<b>you take a look at it, let me know when you are</b>		20	<b>right?</b>	
21	<b>done.</b>		21	MR. HUME: Objection, lacks foundation.	
22	A. Yes, it is the same chain that we saw		22	A. Robert prepared it. I reviewed it, so	
23	earlier.		23	that is the level of involvement.	
24	<b>Q. But a different branch of that chain?</b>		24	<b>Q. I guess in some of the earlier e-mails</b>	
25	A. It has a couple of extra points at the		25	<b>you had some comments about things to be included</b>	
Page 156			Page 157		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	156	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	157
2	as receivables, et cetera?		2	assets being transferred. For example, there was	
3	A. Correct.		3	a whole slew of activity around what moved into	
4	<b>Q. On this exhibit, Exhibit 153A, were any</b>		4	Barclays wealth, so the non-institutional	
5	<b>derivatives included as part of the total assets?</b>		5	business.	
6	MR. HUME. Objection, lacks foundation		6	<b>Q. The PIN business?</b>	
7	A. This includes the assets that I was		7	A. The PIN business, yes, which again I	
8	aware of and was limited to the assets that		8	didn't have any visibility really into. So I am	
9	I would have some visibility around, and as you		9	not sure about the sort of accounting there. On	
10	can see it does not include anything on the		10	the derivatives side it was again -- it was not	
11	liability side and it does not have anything on		11	something that I really had any visibility around.	
12	derivatives. I didn't have visibility on either		12	<b>Q. Do you know the economics of the PIN</b>	
13	of those.		13	<b>component of the transaction?</b>	
14	<b>Q. Is it your understanding at some point</b>		14	A. I don't, no	
15	<b>the assets side picked up a derivatives component</b>		15	<b>Q. Have you seen any analysis or valuations</b>	
16	<b>as well?</b>		16	<b>of that?</b>	
17	A. Yes, that is my understanding.		17	A. I have not, no. My involvement in that	
18	<b>Q. If you didn't have visibility on that,</b>		18	has been limited to -- it has been really very	
19	<b>where would that have come from? Who would have</b>		19	limited. I am aware of some of the issues with	
20	<b>provided that information for the balance sheet?</b>		20	transferring assets over and I was involved in	
21	A. I think the product control team or		21	some of the reconciliations around positions that	
22	other parts of the finance team. It is perhaps		22	were expected to be transferred over in the	
23	worth just saying, there were some other		23	various conversions but did not get transferred,	
24	components to the transaction which were not		24	but I have not seen any economics or anything over	
25	related just to these series of repos and these		25	and above that.	

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	158
2	<b>Q. Do you recall there being a customer</b>	
3	<b>cash component with the PIN transfer?</b>	
4	A I don't, no	
5	(Exhibit 154A marked for identification)	
6	<b>Q. Have you had a chance to review 154A?</b>	
7	A Not yet. Right.	
8	<b>Q. Have you seen Exhibit 154A before today?</b>	
9	A. No.	
10	<b>Q. Would you turn to the second page of the</b>	
11	<b>exhibit. You will see it is the calculations we</b>	
12	<b>saw before, only now there has been a section</b>	
13	<b>added for liabilities. Do you see that?</b>	
14	A Yes.	
15	<b>Q. And this spreadsheet as well does not</b>	
16	<b>have an asset entry for derivatives, right?</b>	
17	A I cannot see one.	
18	<b>Q. There is a line item under "liabilities"</b>	
19	<b>for equity, do you see that?</b>	
20	A. I do.	
21	<b>Q. What is your understanding, if any, of</b>	
22	<b>what that line item is?</b>	
23	A. It is the balancing item.	
24	<b>Q. That is just to balance out the assets</b>	
25	<b>and liabilities?</b>	
	Page 160	Page 161
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	160
2	A. I don't know if there were any asset	
3	valuation changes, and I certainly was not	
4	involved in any asset valuation changes. This	
5	exercise, and my recollection of Irina's version	
6	of this was purely to clean up the asset	
7	classifications.	
8	<b>Q. Do you have 153A before you?</b>	
9	A. Yes	
10	<b>Q. It is this document.</b>	
11	A. Yes	
12	<b>Q. If you turn to the calculation that is</b>	
13	<b>attached to that exhibit, you will see there is</b>	
14	<b>some changes in classification but there is also</b>	
15	<b>a change in the bottom line number. Do you see</b>	
16	<b>that?</b>	
17	A. Yes.	
18	<b>Q. Do you have any understanding as to why</b>	
19	<b>the bottom line number had changed? I think both</b>	
20	<b>of these e-mails are over that same weekend.</b>	
21	A. It is a trivial amount. It is	
22	34 million, it is rounding. I don't know what	
23	Irina did. It could have been changing the	
24	decimal points or something.	
25	<b>Q. The one other change that I see in the</b>	

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	162	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	163
2	today?		2	you can take a look at that and let me know if you	
3	A. No.		3	are familiar with any of that document.	
4	Q. Are you familiar with this document?		4	A. I have not seen this before.	
5	A. No		5	Q. If you turn to page 3 of this document,	
6	Q. I will ask you a couple of notations and		6	Exhibit 88B, there is a spreadsheet with the title	
7	see if they have any meaning to you. There is		7	"Long Island Acquisition Balance Sheet Draft". Do	
8	a column, column D, which is titled "PCG value".		8	you see that?	
9	Do you see that?		9	A. I do.	
10	A. I do.		10	Q. Do you have an understanding as to what	
11	Q. Do you understand what that means?		11	the Long Island acquisition was?	
12	A. Product control group value.		12	A. Yes.	
13	Q. There is a column F titled "PCG		13	Q. It is the Lehman/Barclays transaction?	
14	liquidity value". Do you see that?		14	A. Yes.	
15	A. I do.		15	Q. Is this spreadsheet one that you are	
16	Q. Do you have any understanding as to what		16	familiar with?	
17	that means?		17	A. I don't believe I have seen this.	
18	MR. HUME: Don't speculate.		18	Q. The documents that were marked as	
19	A. I don't want to speculate.		19	Exhibits 86B, 87B and 88B have been described to	
20	Q. Sir, I am handing you a document that		20	us as spreadsheets containing information provided	
21	was previously marked as Exhibit 87B. Are you		21	to Barclays' auditors in connection with the	
22	familiar with that document?		22	acquisition. Were you involved in providing any	
23	A. No.		23	information to Barclays' auditors in connection	
24	Q. I am handing you a document marked		24	with the acquisition?	
25	Exhibit 88B. That is a multipage document. If		25	A. I was not, no.	
Page 164			Page 165		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	164	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	165
2	Q. Did Barclays' auditors ever have		2	Q. Who would know about sales of	
3	conversations with you about what they were doing		3	collateral, what is sold by Lehman to Barclays and	
4	to account for the acquisition?		4	that may have been onsold now by Barclays?	
5	A. They didn't speak to me, no.		5	A. I don't know who the best person would	
6	Q. Or anyone in your group that you are		6	be. I would assume that someone in Patrick	
7	aware of?		7	Claxton's team would be able to.	
8	A. I believe that they spoke to one or two		8	Q. Claxton's team?	
9	of the more junior people in the group about the		9	A. Patrick Claxton's team.	
10	components in Schedule B, what you would know as		10	Q. What is his position, Claxton?	
11	Schedule B, but I think that that was it		11	A. He is BarCap CFO.	
12	Q. Do you have any understanding as to the		12	MR. TAMBE : Okay. Let's take a break	
13	questions that they had about Schedule B?		13	and then pick up again.	
14	A. I think mainly it was around the way		14	(Break for Lunch from 11:53 to 12:33 )	
15	that it was constructed and balances confirmed,		15	(Exhibit 156A marked for identification)	
16	certainly not to do with valuation		16	MR. HUME: Before we get started, in	
17	Q. Of the assets that were transferred from		17	terms of timing and what we discussed,	
18	Lehman to Barclays, the various pieces of		18	unfortunately the goal was to finish so he could	
19	collateral, do you have any understanding as to		19	preserve his Friday afternoon for work. He has	
20	whether any of that collateral has been sold by		20	things to do, which is why we started at 7.00. He	
21	Barclays?		21	is I think realistically to take until 2.00 pm.	
22	MR. HUME: Objection, lacks foundation.		22	MR. BUNTING: 2:00 or 3:00?	
23	A. Again, I would be speculating but --		23	MR. HUME: 2:00. That was I think the	
24	MR. HUME: Don't speculate		24	time he had in his 7-hour cut-off. Obviously we	
25	A. So I should not		25	are not saying you are only entitled to that, and	

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	166	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	167
2	based on what you said before the break it is not		process that had commenced as early	
3	clear that an hour and a half will be -- it sounds		as September 19 and continued post-closing?	
4	like an hour and a half will not be enough. We		4. A. That is correct.	
5	will see. If it is not enough we can arrange to		5. Q. Just a question about the market values	
6	keep it open perhaps. He is here when you are		6. that are used in these attachments.	
7	coming back for Claxton on September 4. We can do		7. A. Yes.	
8	it the day before or something.		8. Q. Generally, what is the source of the	
9	MR. TAMBE. Okay, let's get as much		9. market value information in this document?	
10	progress as we can		10. A. I believe that that was the --	
11	I have placed before you a document		11. MR. HUME: I am sorry, I need to	
12	marked Exhibit 156A. It is a cover e-mail and		12. register an objection. This e-mail looks	
13	then what appears to be a set of spreadsheets		13. privileged.	
14	attached to it. Are you familiar with those		14. MR. TAMBE: How could it be privileged?	
15	documents?		15. MR. HUME: It is from September 26 after	
16	A. I am.		16. the transaction and it is between Barclays.	
17	Q. The cover e-mail, at the top of the		17. MR. TAMBE: And Weil	
18	e-mail it is from you to Duane McLaughlin and		18. MR. HUME: Where is Weil?	
19	others. Do you see that?		19. MR. TAMBE: David Murgio, Weil cc'd,	
20	A. I do.		20. look at the bottom e-mail	
21	Q. And what you are doing is providing the		21. MR. HUME: Okay. In both e-mails, okay,	
22	latest iterations of Schedule A and Schedule B		22. all right, sorry about that	
23	part one, as of September 26, 2008. Correct?		23. A. I believe that the valuations were the	
24	A. That is correct.		24. Lehman source valuations.	
25	Q. And this is following a reconciliation		25. Q. As of what date?	
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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	168	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	169
2	A. Probably as of the 18th. I am not sure		2. Q. Who has at Barclays?	
3	that they were updated subsequently, close of the		3. A. That would be part of the finance	
4	18th.		4. function.	
5	Q. Just as a matter of convention, that was		5. Q. Claxton's group?	
6	picked as the valuation date to be used for these		6. A. Claxton.	
7	schedules, was that a conscious decision?		7. Q. Claxton's group, right.	
8	A. No, I mean for convenience, because, you		8. (Exhibit 157A marked for identification)	
9	know, systems were not being updated afterwards or		9. I have placed before you a 2-page document marked	
10	we were not getting full feeds from all of the		10. Exhibit 157A. Take a moment to look at it, let me know when	
11	external providers, and it was almost by necessity		11. you are done.	
12	the reference date that we were using and the		12. A. Yes.	
13	reference data, but it was not a conscious		13. Q. There is a chain of e-mails between	
14	decision that it should be as of that date.		14. David Aronow and yourself?	
15	Q. Are you aware of a valuation done of		15. A. Yes.	
16	these securities that are in the spreadsheet		16. Q. The e-mail in the middle of page 1 is	
17	attached to Exhibit 156A, a valuation that was		17. from David Aronow to you with a CC to Ian Lowitt.	
18	done as of 19 September?		18. There is a reference there to the Barclays repo.	
19	A. I am actually not aware of any explicit		19. Do you see that?	
20	valuation done. There have been many I think		20. A. I do.	
21	valuations as of the closing date for recording		21. Q. Towards the middle of that first big	
22	the transaction, you know, the value of the		22. paragraph in that e-mail it states that:	
23	transaction, so I am not sure which you are		23. "They are not interested in moving forward with	
24	referring to. I have not really been part of		24. any more collateral movements from us to them today through	
25	those.		25. the process we built and applied yesterday."	

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	170
2	<b>Do you see that?</b>	
3	A. I do.	
4	<b>Q. Do you have an understanding as to what</b>	
5	<b>that is a reference to?</b>	
6	A. Yes, I think that that is the specific	
7	process where collateral was moving from JP Morgan	
8	to BONY and had been applied the previous day, so	
9	I think that there was an unusual process of	
10	pre-agreeing collateral and cash movements and	
11	there was not going to be any more of that.	
12	<b>Q. And this was not a limitation on</b>	
13	<b>movements of other collateral outside of the repo</b>	
14	<b>process?</b>	
15	A. That was not my interpretation that	
16	there was not going to be that -- excuse me, I did	
17	not interpret this as meaning that there were not	
18	going to be any other movements outside of the	
19	repo process.	
20	<b>Q. In terms of the repo process, you</b>	
21	<b>understood this as an indication from Barclays</b>	
22	<b>that they considered themselves to be fully</b>	
23	<b>collateralized applying the haircuts to the repo</b>	
24	<b>piece?</b>	
25	MR. HUME: Objection, lacks foundation.	
	Page 172	Page 173
1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	172
2	settlement counterparty role around FX	
3	transactions.	
4	<b>Q. And if they were to do that, drawing</b>	
5	<b>your attention to the bottom of page 1, was the</b>	
6	<b>understanding that they would stand to get the</b>	
7	<b>\$1.3 billion of excess cash in the account?</b>	
8	A. The \$1.3 billion of excess cash in the	
9	account is I believe the balance with Citibank,	
10	and that was a possibility that Citibank would	
11	then release that, because they really had been	
12	very explicit with the fact that they were holding	
13	it against FX activity.	
14	<b>Q. Just to be clear, if Barclays were able</b>	
15	<b>to step into those transactions they would get the</b>	
16	<b>benefit of that cash?</b>	
17	MR. HUME: Objection, calls for	
18	speculation.	
19	A. I think potentially	
20	<b>Q. These e-mails are dated 18 and</b>	
21	<b>19 September. Do you know if in fact as the</b>	
22	<b>transaction unfolded whether Barclays did in fact</b>	
23	<b>step into this position?</b>	
24	A. I believe they did not step into that	
25	position.	

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	174	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	175
2	e-mail from Anna Yu at Lehman to several people,		2	these balances.	
3	including you. Do you see that?		3	(Exhibit 160A marked for identification)	
4	A. Yes.		4	<b>Q. I have handed you a one page document</b>	
5	Q. There are two items in her e-mail. One		5	marked Exhibit 160A. Let me know when you have	
6	is concerning the 15c3-1 segregated cash. Do you		6	had a chance to review it.	
7	see that?		7	A. I can see this.	
8	A. I do.		8	<b>Q. There is an exchange of e-mails between</b>	
9	<b>Q. And we have talked about that before.</b>		9	<b>yourself and Chris O'Meara at Lehman?</b>	
10	The second item relates to "Futures seg cash and		10	A. Yes.	
11	margin receivables breakout."		11	<b>Q. The second e-mail from the top is an</b>	
12	A. Yes.		12	<b>e-mail from Chris O'Meara to you. There is</b>	
13	<b>Q. What is that a reference to?</b>		13	<b>a discussion about the 15c3-3 lock up. Towards</b>	
14	MR. HUME: Objection, lacks foundation.		14	<b>the end of his e-mail he asks: "Is DTCC issue</b>	
15	A. I don't know the details. I can only		15	<b>fatal?" Do you see that?</b>	
16	read that it was related to future seg cash and		16	A. I do	
17	margin receivables.		17	<b>Q. What was the DTCC issue that he was</b>	
18	<b>Q. Do you understand that as related to the</b>		18	<b>referring to, do you know?</b>	
19	<b>OCC transactions?</b>		19	A. I believe this was just DTC supporting	
20	MR. HUME: Objection, calls for		20	the settlements post-close.	
21	speculation.		21	<b>Q. And was there a concern that they would</b>	
22	A. The risk system recorded futures,		22	<b>not be supporting the settlements post-close?</b>	
23	exchange traded options and FX transactions, and		23	A. There was certainly not any clarity on	
24	so I would expect that the OCC transactions would		24	how this was going to work.	
25	be recorded on that system and would be a part of		25	<b>Q. You respond to Chris O'Meara's e-mail</b>	
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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	176	1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>	177
2	with the line at the top that says "Possibly		2	<b>CROSS-EXAMINATION BY MR. MAGUIRE:</b>	
3	fatal", and then you say: "Can you call me re		3	(Exhibit 161A marked for identification)	
4	15c3". Do you see that?		4	MR. MAGUIRE: Mr. Tonucci, I have handed	
5	A. Um hum		5	you a document we have marked as Exhibit 161A, an	
6	<b>Q. Your reference to "possibly fatal", is</b>		6	e-mail exchange between you and Mr. Fleming. You	
7	<b>that a reference to the DTCC issue or to the 15c3</b>		7	will see that Mr. Fleming advised you on Sunday,	
8	<b>issue?</b>		8	September 21, about the statement from the OCC	
9	A. DTCC issue.		9	What was that a reference to?	
10	<b>Q. Is there a connection between the DTCC</b>		10	A. It is just a margin statement received	
11	<b>issue and the 15c3 issue?</b>		11	from the OCC	
12	A. No.		12	<b>Q. And reflects a large excess position</b>	
13	<b>Q. Two separate issues?</b>		13	<b>in-house and customer?</b>	
14	A. Yes.		14	A. Yes.	
15	MR. TAMBE: I think in the interests of		15	<b>Q. What does that mean?</b>	
16	time I am going to pass the questioning to other		16	A. That we had excess margin deposited with	
17	counsel. I think I am largely done. If we do		17	the exchange.	
18	have any clean-up questions we would like to take		18	<b>Q. He goes on to say: "I do not know how</b>	
19	you up on your offer to finish examining		19	<b>accessible this is." What did you understand that</b>	
20	Mr. Tonucci when we return for the Claxton		20	<b>to mean?</b>	
21	deposition I assume that offer still stands.		21	A. At that time it was not clear what the	
22	MR. HUME: If necessary and reasonable		22	clearing banks that serviced our cash payment	
23	within the time limit, yes.		23	requirements were going to support, so it was not	
24	MR. TAMBE: Thank you, Mr. Tonucci.		24	clear whether JP Morgan Chase, for example, would	
25	A. Thank you.		25	actually execute a payment or release a payment.	

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	178	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	179
2	So the mechanisms for accessing cash and		2	A. It was typically the case that there	
3	transferring cash were at that point unclear		3	would be some LCs also deposited with the	
4	<b>Q. Was there clarity as to the actual state</b>		4	exchanges. LCs are letters of credit provided by	
5	<b>of the margin at OCC? In other words, was that in</b>		5	third party banks, and I was not sure if that	
6	<b>real time? Did you know exactly what the excess</b>		6	excess amount reflected the OCC drawing down on	
7	<b>was?</b>		7	some of those LCs.	
8	A. I didn't.		8	<b>Q. What is the significance of that if</b>	
9	MR. HUME: Objection, lacks foundation		9	<b>there has been a drawdown in LCs?</b>	
10	A. I don't know.		10	MR. HUME: Objection, calls for	
11	<b>Q. How did you come to be involved in this</b>		11	speculation.	
12	<b>e-mail exchange?</b>		12	A. It was certainly not my area of	
13	A. Dan worked for me managing the cash		13	expertise but, you know, I think a question to ask	
14	management area and I think he was just trying to		14	was whether they calculated the excess inclusive	
15	keep me up-to-date on anything that he thought		15	of any cash that they may have received from third	
16	would be relevant or of interest.		16	party banks.	
17	<b>Q. Had you asked him specifically for any</b>		17	<b>Q. Did you find out about that?</b>	
18	<b>OCC excess?</b>		18	A. I don't recall.	
19	A. I don't believe I had.		19	<b>Q. What is the difference between the house</b>	
20	<b>Q. Was this part of the effort to find</b>		20	<b>and the customer excess?</b>	
21	<b>collateral to move to Barclays?</b>		21	A. I am not sure.	
22	A. No, it was not.		22	(Exhibit 162A marked for identification)	
23	<b>Q. You respond to him, you say: "But that</b>		23	<b>Q. I will show you a document we will mark</b>	
24	<b>may include the value of LCs drawn."</b> What does		24	<b>as Exhibit 162A. You will see this is an exchange</b>	
25	<b>that mean?</b>		25	<b>that starts September 22, with a question about</b>	
Page 180			Page 181		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	180	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	181
2	the final list of purchased assets.		2	<b>Q. Are you familiar with the term "cash</b>	
3	A. Yes.		3	<b>equivalent"?</b>	
4	<b>Q. What did you understand is meant by the</b>		4	A. I am	
5	<b>final list of purchased assets?</b>		5	<b>Q. What does that mean to you?</b>	
6	A. The assets which were transferred under		6	MR. HUME. Objection, calls for	
7	the repo agreement and the other collateral -- I		7	speculation.	
8	can't recall the details of this schedule -- the		8	A. Equivalent to cash.	
9	other collateral, including the unencumbered		9	<b>Q. And the treasures that were the subject</b>	
10	assets. I am not sure about the sort of precision		10	<b>of this lock up, were they equivalent to cash?</b>	
11	composition of this list, and there is not a lot		11	A. I don't think so.	
12	of color given in the initial e-mail, so I don't		12	<b>Q. Why not?</b>	
13	know if I responded with what was included on		13	A. Because I think what goes into cash and	
14	Schedule B.		14	cash equivalent is really overnight money market	
15	<b>Q. You referred to 15c3 lock up of cash of</b>		15	investments, and I don't believe these treasures	
16	<b>769 million. Do you see that?</b>		16	were overnight treasures.	
17	A. Yes		17	<b>Q. You use the term "cash" here, cash of</b>	
18	<b>Q. And you had told us previously I believe</b>		18	<b>769 million. Can you tell us why you used that</b>	
19	<b>that there was about a billion dollar of cash at</b>		19	<b>term, as opposed to securities?</b>	
20	<b>Wells Fargo?</b>		20	A. Because it was late and I was exhausted	
21	A. Yes.		21	and so, you know, it is clearly wrong, because I	
22	<b>Q. The 769, was that cash or securities?</b>		22	was absolutely certain that they were securities.	
23	A. Securities.		23	<b>Q. You use the term "lock up". What does</b>	
24	<b>Q. What kind of securities were they?</b>		24	<b>that refer to?</b>	
25	A. I believe that they were treasures.		25	A. I use the term "15c3 lock up". It is	

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	182	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	183
2	the entirety of that that is important It is the		2	<b>Q. And you understood the report contained</b>	
3	amount of cash and securities that was segregated		3	<b>positions at OCC?</b>	
4	against the 15c3 reserve requirement.		4	A. That is correct	
5	<b>Q. I will show you a document we will mark</b>		5	<b>Q. What did you mean when you asked the</b>	
6	<b>as Exhibit 163A.</b>		6	<b>question whether these are the positions that</b>	
7	<b>(Exhibit 163A marked for identification)</b>		7	<b>would have been terminated?</b>	
8	This is an e-mail string. You are welcome to look		8	A. I was not sure whether all of the OCC	
9	at as much of it as you want. I am just going to ask you		9	positions had been terminated or whether some	
10	about the top of the page, where Mr. Fleming asks you: "Are		10	positions had remained open, so there was at that	
11	these the OCC positions that would have been terminated and		11	time a lack of certainty about which positions had	
12	have generated the cash?" Do you see that?		12	been closed out by the exchanges, and I was not	
13	A. Is that not from me to him		13	sure if that was applicable to OCC as well. I was	
14	<b>Q. I am sorry, you are correct, it is from</b>		14	aware that the CBOT had closed out some positions.	
15	<b>you to Mr. Fleming.</b>		15	I was just asking the question whether that was	
16	A. Yes.		16	the case here.	
17	<b>Q. Can you explain to us what you were</b>		17	<b>Q. Did you have any information about any</b>	
18	<b>referring to there?</b>		18	<b>close out of positions at OCC?</b>	
19	A. I was looking for clarification on what		19	A. I did not, no.	
20	this statement was and what exactly these		20	<b>Q. Did you get any information as a result</b>	
21	positions related to and how they affected the		21	<b>of this question?</b>	
22	cash position or the margin position. So up to		22	A. I don't believe I saw anything more, no	
23	this point I had never seen this report before or		23	<b>Q. I will show you a document that has</b>	
24	this type of report so I was just looking for		24	<b>previously been marked as Exhibit 53. Have you</b>	
25	clarification as to how to interpret it.		25	<b>seen this e-mail before, sir?</b>	
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	184	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	185
2	A. No.		2	was testimony at I think Mr. Berkenfeld's	
3	<b>Q. Can you tell me who Mr. Willoughby is?</b>		3	deposition that Mr. Willoughby was acting in	
4	A. He was a lawyer at Lehman Brothers.		4	a business capacity in connection with this That	
5	<b>Q. Was he working in connection with the</b>		5	is my understanding. Now, I am free to be	
6	<b>transfer of OCC positions?</b>		6	corrected but I don't think this is the time or	
7	A. I don't know		7	place to do that	
8	<b>Q. Did you speak with him on or</b>		8	MR. HUME: It is the time and the place	
9	<b>about September 30, 2008, concerning the transfer</b>		9	if we have clawed the e-mail back. Do you take	
10	<b>of OCC positions to Barclays?</b>		10	the position even if we have clawed it back	
11	A. Yes, briefly.		11	that --	
12	MR. HUME: Can I state for the record,		12	MR. MAGUIRE: I believe you are	
13	I thought we had made a request to claw this		13	entitled to reserve your rights as to the e-mail	
14	e-mail back. It is privileged. Are you aware of		14	I am not aware that you have clawed it back.	
15	that?		15	MR. HUME: We can determine that in one	
16	MR. MAGUIRE: I am not aware, but		16	minute off the record and I would like to do that,	
17	I mean if you can reserve your rights that is		17	because if we have clawed it back I don't think	
18	fine, but I still intend to ask the witness about		18	you are allowed to ask questions about it, unless	
19	his conversation with Mr. Willoughby.		19	and until you have successfully challenged the	
20	MR. HUME: We reserve the right to -- I		20	privilege asserted.	
21	believe we have clawed it back as privileged and		21	MR. MAGUIRE: Okay. If you are taking	
22	if we have I don't think it is appropriate asking		22	the position that you want to direct the witness	
23	questions about it.		23	not to answer the questions, that is fine, but I	
24	MR. MAGUIRE: You can state, you can		24	don't think the questions I am asking would be	
25	reserve your rights on that but I believe there		25	objectionable whether or not there was any claw	

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	186	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	back		exchange the OCC. Do you recall that, sir?
3	MR. HUME: Let's put the document aside		A. I recall asking the question. I should
4	and just ask the questions.		clarify that I had not seen the APA and so I would
5	MR. MAGUIRE . Let me ask you directly		not really have an understanding of what had been
6	then.		agreed I was just asking the question.
7	MR. HUME: Put the document aside,		Q. And you were asking the question whether
8	ignore the document and answer the questions.		Barclays was entitled to anything from the
9	MR. MAGUIRE In September 2008 you had		Lehman's position at OCC beyond the collateral
10	some discussions with people at Barclays		that was necessary to support specific positions?
11	concerning some open issues under the transfers of		MR. HUME. To the extent you were asking
12	assets from Lehman to Barclays. Isn't that		that question of a lawyer, it is privileged. You
13	correct?		should not reveal either the question asked or the
14	A. There were a variety of conversations,		answer given.
15	yes.		A. I honestly do not recall the specifics
16	<b>Q. And in connection with OCC positions you</b>		of that conversation. My reason for interest
17	<b>identified two, what you described as the main</b>		would have been to help direct the group that
18	<b>open issues concerning the transfer. Isn't that</b>		worked for me in cash management to provide the
19	<b>correct?</b>		relevant analytical support or information. I
20	A. I can't really recall the specifics.		don't really have a view on what the entitlement
21	<b>Q. Do you recall that one specific that you</b>		was or an understanding, and I am not a lawyer.
22	<b>identified as an open issue was in connection with</b>		<b>Q. I am not asking you for a legal view,</b>
23	<b>the transfer of OCC positions, the extent to</b>		<b>sir. Can you explain to us the difference between</b>
24	<b>whether that was only with the amount, the minimum</b>		<b>the amount necessary to support a position at OCC</b>
25	<b>amount necessary to support the collateral and</b>		<b>and an amount that is not limited by that? Can</b>
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	188	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	you just explain that distinction for us?		business person?
3	MR. HUME: Objection. He testified he		A. I can't recall having done so.
4	is not expert in the OCC issues		<b>Q. Did you discuss this with anyone else,</b>
5	A. I was asking very open questions because		<b>whether a lawyer or not, who was acting in</b>
6	I don't really know the specific mechanics around		<b>a business capacity?</b>
7	this, so this was just a better understanding so		MR. HUME. If it was a lawyer, you
8	that I could then help my team provide the sort of		should not answer.
9	necessary supporting information So I am asking		A. I don't recall.
10	these questions in a general way.		<b>Q. When you talked to Mr. Willoughby, was</b>
11	<b>Q. And you don't have an understanding as</b>		<b>he practising as a lawyer? Was he a lawyer, in</b>
12	<b>to whether Barclays was entitled to anything in</b>		<b>other words, who actually was providing legal</b>
13	<b>terms of OCC margin beyond what was necessary to</b>		<b>advice?</b>
14	<b>support specific positions?</b>		A. Yes.
15	MR. HUME: Objection to the form of the		<b>Q. Or was he somebody who had a business</b>
16	question.		<b>function at Barclays?</b>
17	A. I don't have a view or an understanding		A. I thought of him as a lawyer.
18	of what the entitlement was, full stop. I had not		<b>Q. Did you obtain any legal advice from</b>
19	seen the APA I don't have -- I am not a lawyer		<b>Mr. Willoughby?</b>
20	and I have not reviewed it in relation to this, in		MR. HUME: Objection. You are not
21	relation to these series of positions.		entitled to get that information
22	<b>Q. Did you ever discuss this question with</b>		<b>Q. Only "yes" or "no".</b>
23	<b>Ian Lowitt?</b>		MR. HUME: I am instructing the witness
24	A. I don't believe so.		not to answer that.
25	<b>Q. Did you ever discuss this with any other</b>		A. I am not going to answer

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	190	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	191
2	MR. HUME: He is not qualified to		2	had with Mr. Willoughby in late September, 2008?	
3	articulate what is legal advice and it is		3	A. Certainly not that -- I don't recall	
4	privileged.		4	speaking to Scott Willoughby and I would say that	
5	<b>Q. Fine. Let me ask you, did you obtain</b>		5	my involvement in this transaction subsequent to	
6	<b>any advice from Mr. Willoughby?</b>		6	that was minimal.	
7	MR. HUME: Objection. Don't answer.		7	<b>Q. And you don't recall discussing this,</b>	
8	<b>Q. I am not asking for the substance of any</b>		8	<b>this I mean in the OCC positions and Barclays'</b>	
9	<b>advice I just want to know did Mr. Willoughby</b>		9	<b>entitlement since September 2008 with anyone?</b>	
10	<b>respond and provide you with any advice following</b>		10	A. No, I don't believe I have discussed	
11	<b>that discussion that you had?</b>		11	with anyone	
12	MR. HUME: Object to the		12	<b>Q. You testified earlier about unencumbered</b>	
13	characterization of whether there was		13	<b>assets, and specifically I want to ask you about</b>	
14	a communication. You can ask whether there was		14	<b>Schedule B that you mentioned. Where were the</b>	
15	a communication from Mr. Willoughby.		15	<b>assets that are listed on Schedule B physically</b>	
16	A. I don't recall.		16	<b>located?</b>	
17	<b>Q. You don't recall receiving any</b>		17	A. There were very many versions of	
18	<b>communication from Mr. Willoughby in response to</b>		18	Schedule B so you are going to have to be more	
19	<b>the discussion that you had in late September?</b>		19	specific.	
20	A. That is right.		20	<b>Q. I am just now looking only for your</b>	
21	<b>Q. And you don't recall following up with</b>		21	<b>understanding as to where they were physically</b>	
22	<b>Mr. Willoughby concerning that communication?</b>		22	<b>custodied. If it is more than one place or</b>	
23	A. That is right.		23	<b>changed over time, let me know?</b>	
24	<b>Q. So as far as you recall, you have never</b>		24	A. That is what I am saying, it was more	
25	<b>touched this subject since that one discussion you</b>		25	than one place and it changed over time.	
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	192	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	193
2	<b>Q. What were the different places where</b>		2	<b>Q. Then you will see Mr. Azerad's e-mail</b>	
3	<b>those assets were --</b>		3	<b>says: "FYI, 3.2 billion at risk." Can you explain</b>	
4	A. DTCC, JP Morgan, Euroclear. I can't		4	<b>what "3.2 billion at risk" means?</b>	
5	remember the name of the Canadian depository, so		5	A. I don't think I can.	
6	those are the ones that I remember		6	<b>Q. Did you have an understanding at the</b>	
7	<b>Q. At any time was Schedule B limited to</b>		7	<b>time that you received this e-mail?</b>	
8	<b>the unencumbered assets at DTC?</b>		8	A. I am assuming the 3 2 billion is the	
9	A. Not that I am aware of.		9	"stays at LBI" position. I am not too sure what	
10	<b>Q. I will show you a document we will mark</b>		10	the "at risk" means.	
11	<b>as 164A.</b>		11	MR. HUME: Don't speculate.	
12	<b>(Exhibit 164A marked for identification).</b>		12	<b>Q. In your e-mail you say: "That seems very</b>	
13	<b>If we start at the bottom, you will see there is</b>		13	<b>high. What are the assets they need to sell?"</b>	
14	<b>an e-mail that then gets sent to you on 18 September, and</b>		14	<b>Does that help you to understand what you were</b>	
15	<b>then you forward to Mr. Azerad. Do you see that?</b>		15	<b>hearing here and what you were following up with?</b>	
16	A. I do.		16	A. Not really. I mean, there was a lot	
17	<b>Q. And the chain starts with what is called</b>		17	going on, and I am sure you have seen that there	
18	<b>a box summary. Can you tell me what the box</b>		18	were a lot of e-mails that I was getting, so	
19	<b>summary is?</b>		19	responses like that could be quite open, just	
20	A. Yes, it is the securities in possession,		20	because I don't really know what was going on and	
21	in the clearance box.		21	I was trying to get information from others.	
22	<b>Q. When you say "clearance box", is that</b>		22	<b>Q. What was the Sparrow report?</b>	
23	<b>the clearance box at DTC?</b>		23	A. Charlie Sparrow was the mortgage trader,	
24	A. No, it could mean any number of		24	he was the head of the mortgage desk, so I think	
25	custodial or depository arrangements.		25	it was his report of positions.	

1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI 2        Q. I will show you a document we will mark 3        as Exhibit 165A. 4        (Exhibit 165A marked for identification). 5        I would like to start with Mr. Blackwell's e-mail 6        to you, sir, in which he says: 7        "We need to fund DTC 1.2 billion to allow 8        settlement." 9        A. Which one are you looking at? 10      Q. Did I give you the wrong document? No, 11      sorry, I gave you the wrong document. Let's mark 12      this as Exhibit 166A. 13      (Exhibit 166A marked for identification) 14      Q. Mr. Blackwell asks: "We need to fund DTC 15      1.2 billion to allow settlement and we need to 16      call with Chase." Can you tell me, what was your 17      understanding as to why there is a need to fund 18      1.2 billion to DTC? 19      A. To facilitate the DTC settlement 20      process, there was often a prefunding requirement. 21      You would get the cash back at the end of the day 22      but intra day they would require funding in order 23      to essentially grease the wheels and initiate the 24      settlement chain. 25      Q. This is to clear trades?	Page 194	Page 195
1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI 2        receiving it is the question. 3        A I don't remember receiving it 4        Q. My only question is this is a reference 5        here to a pledge of 800 million to Barclays? 6        A Um hum. 7        Q. Can you tell me what was Lehman doing on 8        Friday, September 19, pledging 800 million to 9        Barclays? 10      MR. HUME: Objection, calls for 11      speculation and lacks foundation Don't 12      speculate. Only speak to what you know. 13      A. I don't know. 14      Q. Do you have any knowledge of any 15      collateral being pledged to Barclays 16      on September 19? 17      A. I do have knowledge of that. 18      Q. What knowledge do you have? 19      A. The details of some securities that were 20      pledged I think became Schedule B1, and I am not 21      sure when I sort of became really conscious of 22      these. I don't remember seeing this mail. 23      Certainly at that point I had not seen any 24      details, so it was after that. 25      Q. So you had knowledge that some	Page 196	Page 197
1        HIGHLY CONFIDENTIAL - PAOLO TONUCCI 2        collateral was being pledged to Barclays? 3        A. I have knowledge that some collateral 4        was pledged to Barclays. I am not aware of having 5        knowledge at the time it was being pledged. 6        Q. When did you learn that it had been 7        pledged to Barclays? 8        MR. HUME. Objection to the vagueness of 9        the word "pledged" in this line of questioning. 10      A. I think late on the 19th, perhaps on the 11      20th. 12      Q. Did you understand -- I will use the 13      word "transfer" maybe. Did you understand the 14      business reason why this collateral had been 15      transferred to Barclays? 16      A. Not specifically, but I would assume as 17      part of the sales agreement. 18      Q. And when did the transfer physically 19      occur? 20      MR. HUME Objection, calls for 21      speculation. 22      A I think I can only say that the 23      transfers that happened that Jim is referring to 24      appear to have happened on the 19th I am aware 25      that there were actually subsequent transfers.	195	197

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	198
2	<b>Q. In the following week?</b>	
3	A. Yes, in the following week.	
4	<b>Q. How did you come to learn about these transfers?</b>	
5	A. I believe that Jim Hraska made me aware of them.	
6	<b>Q. What did he tell you about them?</b>	
7	A. This is the transfers on the 19th I am referring to. I don't remember getting any specifics from him.	
8	<b>Q. How did you come to learn that they were part of the sale agreement?</b>	
9	A. I didn't come to learn of that. I was saying that that was my assumption, that would be my assumption.	
10	<b>Q. Did you ever get any information from anyone as to whether or not they were part of the sale agreement?</b>	
11	MR. HUME: Objection to form	
12	A. I don't think so. I don't know What do you have in mind?	
13	<b>Q. I am just trying to understand. I am trying to learn what you know about those transfers, whether you learned about it on the</b>	
14	MR. HUME: Objection to form	
15	A. I don't think so. I don't know What do you have in mind?	
16	<b>Q. Do you have any different understanding?</b>	
17	A. I don't have any different understanding.	
18	<b>Q. I will show you a document we will mark as Exhibit 167A.</b>	
19	(Exhibit 167A marked for identification)	
20	<b>If we start at the beginning of the string, the second page, sir, chronologically the beginning, Mr. Azerad is informing you that he found 700 million in the DTC box, and at the end of his e-mail the key question is whether</b>	
21	Page 200	Page 201
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	200
2	they can count the 800 million delivered to Barclays on	
3	<b>Friday. Do you see that, sir?</b>	
4	A. I do	
5	<b>Q. Can you tell us what the issue was that Mr. Azerad and you were communicating about here?</b>	
6	A. It is just a representation of the unencumbered collateral that was being included as transferable.	
7	<b>Q. When you say "the representation", what do you mean?</b>	
8	A. In order to represent it accurately in the opening balance sheet or in the various agreements, we just wanted to be clear on how this was going to be -- how this should be recorded	
9	So I think Robert is asking the question: are we treating the 800 million they got transferred on the Friday as part of the unencumbered collateral schedule?	
10	<b>Q. And what was the answer to that question?</b>	
11	A. I don't see an answer to that. I think we are asking -- Ian was asking that we get a legal confirmation, and I don't recall seeing one.	
12	<b>Q. Where did the 800 million collateral come from?</b>	
13	A. I think it was from the DTC, one of the DTC accounts.	
14	<b>Q. I will show you a document we will mark as Exhibit 168A.</b>	
15	(Exhibit 168A marked for identification)	
16	<b>If we start at the first e-mail you received, Saturday, September 20 e-mail, on the second page, you were copied on that e-mail from Mr. Forrest, right?</b>	
17	A. Yes.	
18	<b>Q. You see the subject is "Re: 1.9 billion."</b>	
19	A. Yes.	
20	<b>Q. What is the significance of the 1.9?</b>	
21	A. The 1.9 billion was the initial estimate of the unencumbered collateral.	
22	<b>Q. And at the time of that, of that initial estimate, do you remember where that collateral was custodied or whether it was in more than one place?</b>	
23	A. It was in a number of places.	
24	<b>Q. The first item here is 800 million at BONY. Do you know whether that is reference to</b>	

<p style="text-align: right;">Page 202</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>202</b></p> <p>2       the 800 million that had been transferred on the</p> <p>3       <b>Friday?</b></p> <p>4       A. I don't. I would assume so.</p> <p>5       MR. HUME: Don't assume. Don't</p> <p>6       speculate.</p> <p>7       Q. The next is: "We have 746 million in</p> <p>8       074." Do you recognize that as a DTC box?</p> <p>9       A. I do</p> <p>10      Q. You will see number 4 says: "We have</p> <p>11      identified another 300 million of mortgages in</p> <p>12      636." Do you know what 636 is a reference to?</p> <p>13      A. Another DTC box or account.</p> <p>14      Q. And Mr. Forrest says: "That is a total</p> <p>15      of 2.181 billion." Do you see that, sir?</p> <p>16      A. Yes.</p> <p>17      Q. Was there a specific target that people</p> <p>18      were shooting for, a specific total people were</p> <p>19      trying to get to?</p> <p>20      A. Not really.</p> <p>21      Q. So people were kind of keeping score of</p> <p>22      what they found but there was not any number that</p> <p>23      you had in mind as a target that you needed to get</p> <p>24      to?</p> <p>25      MR. HUME: Objection to the form.</p>	<p style="text-align: right;">Page 203</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>203</b></p> <p>2       A. Not really. I mean I think, as Ian</p> <p>3       says, it is more important just to be accurate.</p> <p>4       Q. You had mentioned that you had heard I</p> <p>5       believe on the Friday that there was a need for</p> <p>6       additional collateral in order for the transaction</p> <p>7       to close; that was something that Mr. Lowitt told</p> <p>8       you?</p> <p>9       A. Um hum</p> <p>10      Q. And he reiterated that a number of times</p> <p>11      during the day?</p> <p>12      A. Yes.</p> <p>13      Q. Did he tell you how much additional</p> <p>14      collateral would be needed to make the transaction</p> <p>15      close?</p> <p>16      A. I thought -- no, I don't remember the</p> <p>17      total. It was more than 2 billion.</p> <p>18      Q. Was there a number that he gave you and</p> <p>19      you don't remember what that is now?</p> <p>20      A. I don't remember what it was. I don't</p> <p>21      remember if he gave me a number and I don't</p> <p>22      remember what it was</p> <p>23      Q. Over the course of the next couple of</p> <p>24      days, the Saturday and the Sunday, did you hear of</p> <p>25      a target, a number that was needed in order to</p>
<p style="text-align: right;">Page 204</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>204</b></p> <p>2       close the transaction?</p> <p>3       A. I think we had gone to the bankruptcy</p> <p>4       court on Friday with the unencumbered collateral</p> <p>5       at 1.9 billion, so that was our initial estimate,</p> <p>6       and then a further billion or so in the 15c3</p> <p>7       reserve account, so that would give nearly</p> <p>8       \$3 billion. I think that that is what everyone</p> <p>9       was expecting the value of the unencumbered</p> <p>10      collateral plus the 15c3 to be.</p> <p>11      Q. When you say "we went to the bankruptcy</p> <p>12      court", you are describing what everybody's</p> <p>13      expectation was at the time everybody went down to</p> <p>14      the bankruptcy court hearing?</p> <p>15      MR. HUME: Objection to the form,</p> <p>16      calling for speculation about what other people's</p> <p>17      expectations were</p> <p>18      Q. That certainly was your understanding?</p> <p>19      A. It was my understanding</p> <p>20      Q. Did you attend the hearing before the</p> <p>21      bankruptcy court?</p> <p>22      A. I did not.</p> <p>23      Q. Did you hear from anybody who did</p> <p>24      attend?</p> <p>25      A. Yes.</p>	<p style="text-align: right;">Page 205</p> <p>1       <b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b>       <b>205</b></p> <p>2       Q. Who did you hear from?</p> <p>3       A. From Chris O'Meara.</p> <p>4       Q. Who was Chris O'Meara?</p> <p>5       A. He was at Lehman Brothers. He had been</p> <p>6       head of risk.</p> <p>7       Q. What did Chris O'Meara tell you about</p> <p>8       the hearing?</p> <p>9       A. That it was long and seemed to have gone</p> <p>10      well, and that the court had approved the sale.</p> <p>11      Q. Did he tell you anything else?</p> <p>12      A. No.</p> <p>13      Q. Did he tell you anything about any</p> <p>14      proceedings that had happened in the course of the</p> <p>15      hearing?</p> <p>16      A. No, he kept it to a minimum.</p> <p>17      Q. Did you hear from anyone else other than</p> <p>18      Chris O'Meara about the hearing?</p> <p>19      A. I did not</p> <p>20      Q. I will show you a document we will mark</p> <p>21      as Exhibit 169A.</p> <p>22      (Exhibit 169A marked for identification).</p> <p>23      The subject of these e-mails is "PL on 9/18". Do</p> <p>24      you have an understanding what "PL" refers to?</p> <p>25      A. I am not sure here. I am not</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	206	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	understanding these mails.		Q. I will show you a document we will mark
3	<b>Q. Do you have any understanding just as to</b>		as Exhibit 170A.
4	<b>what the letters capital P and capital L stand</b>		<b>(Exhibit 170A marked for identification)</b>
5	<b>for?</b>		First, sir, can you tell me what prompted you to
6	MR. HUME: Objection, calls for		send the first e-mail here, just before 4:00 am on
7	speculation. He has already testified he does not		Monday, September 22?
8	know		A. I can't remember.
9	A. I don't know.		<b>Q. You say:</b>
10	<b>Q. You will see that there is a reference</b>		"You should plan on moving all the unencumbered
11	<b>here to your expecting 3.1 billion, and that is</b>		collateral in the DTC box first thing".
12	<b>contrasted with finding only 1.9 billion. Can you</b>		<b>Did you have an understanding then as to what the</b>
13	<b>explain to us what your expectation was?</b>		<b>value of the unencumbered collateral in the DTC box was?</b>
14	MR. HUME: Objection, lacks foundation.		A. Only the estimates.
15	A. I don't know. I don't know where that		<b>Q. And what was the estimate you had at</b>
16	number has come from. I don't have a recollection		<b>this time?</b>
17	of expecting that or communicating that to Irina.		A. I don't remember.
18	<b>Q. Your e-mail says: "My previous answer</b>		<b>Q. Did you follow up on this instruction?</b>
19	<b>was as of Friday night".</b>		A. I don't remember. This is 4:00 in the
20	A. It is not my e-mail.		morning as the transaction was being sort of
21	<b>Q. You are right, it is Mr. Azerad's e-mail</b>		finalized, and I had been up all night, in front
22	<b>to you, and his previous answer was as of Friday</b>		of the Creditors Committee for much of it, so you
23	<b>night and Irina's answer is as of Thursday night.</b>		know it may well be that -- I mean there are going
24	<b>Does that assist you in any way?</b>		to be things that I just don't remember about I
25	A. No.		was quite tired.
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	208	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	<b>Q. I am sure you were. My only question is</b>		<b>Schedule B and should not be in Schedule B?</b>
3	<b>whether there was something specifically that made</b>		A. Yes.
4	<b>you at 4 o'clock in the morning send this</b>		<b>Q. Was that Mr. Claxton's group?</b>
5	<b>particular e-mail?</b>		A. No, Mr. Claxton is at BarCap. It was
6	A. I don't recall it		Mr. Blackwell, who is the head of the operations
7	<b>Q. I will show you a document we will mark</b>		area and was therefore in the best place to
8	<b>as Exhibit 171A.</b>		determine what assets were held.
9	<b>(Exhibit 171A marked for identification)</b>		<b>Q. I will show you a document previously</b>
10	<b>Q. The transfers to the BONY records, this</b>		<b>marked as Exhibit 85B. With respect to the list</b>
11	<b>refers to the assets transferred on Friday?</b>		<b>of exhibits that are attached here, 1 to 8, were</b>
12	A. Yes		<b>you involved, sir, in the preparation of any of</b>
13	<b>Q. Is it your understanding that was the</b>		<b>those?</b>
14	<b>800 million that was transferred on Friday that</b>		A. I don't think directly but some of this
15	<b>was the subject of some of the earlier e-mails</b>		may have come from my team.
16	<b>that we looked at?</b>		<b>Q. Did you attend the APA scheduled meeting</b>
17	A. I believe so.		<b>on September 30?</b>
18	<b>Q. You had referred to I think Schedule B1</b>		A. I don't recall.
19	<b>or .1 I think in your earlier testimony. Is that</b>		<b>Q. Were there any APA scheduled meetings</b>
20	<b>what is referred to here as the first part of the</b>		<b>that you remember attending?</b>
21	<b>Schedule B?</b>		A. I remember attending one meeting on
22	A. Yes.		this. It may well have been this one.
23	<b>Q. Did I understand you earlier to say that</b>		<b>Q. What happened at that meeting?</b>
24	<b>another group was responsible ultimately for</b>		A. It was I think, as I recall, almost
25	<b>determining the exact assets that should be in</b>		entirely dedicated to trying to explain the

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	210	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	sequence of transactions	2	box as of Sunday 9/21/08, APA clearance boxes, APA
3	<b>Q. Which transactions?</b>	3	<b>Schedule B?</b>
4	A. The various repo transactions and	4	A. Yes.
5	collateral transfers	5	<b>Q. Underneath that it has "Positions not</b>
6	<b>Q. Who was at that meeting?</b>	6	<b>with no memo seg, positions with memo seg", and</b>
7	A. I don't recall.	7	<b>a sub-total of those positions?</b>
8	<b>Q. Do you recall anyone who was present at</b>	8	A. Yes.
9	<b>the meeting?</b>	9	<b>Q. What was your understanding as to what</b>
10	A. Not by name.	10	<b>they referred to?</b>
11	<b>Q. If you turn to the first exhibit, the</b>	11	A. They refer to securities identified at
12	<b>APA lead sheet.</b>	12	the DTC, within the DTC box.
13	A. Yes.	13	<b>Q. And underneath that is 636, that is</b>
14	<b>Q. Can you tell us what the elements of the</b>	14	<b>another DTC box?</b>
15	<b>top part, which describe the securities</b>	15	A. That is a different DTC box.
16	<b>transferred under Barclays repo agreement, the</b>	16	<b>Q. And that gives a total for the positions</b>
17	<b>total transferred under the repo agreement, what</b>	17	<b>as of Sunday, September 21; is that correct?</b>
18	<b>does that refer to?</b>	18	A. That is correct.
19	A. The assets transferred on the Thursday	19	<b>Q. And then the next section is the Friday</b>
20	night repo.	20	<b>9/26 transfers. What does that refer to?</b>
21	<b>Q. And the reference to "Fed settled" and</b>	21	A. The Friday -- I think that is wrong
22	<b>"DTC settled", what does that mean?</b>	22	actually. I am not sure.
23	A. I think we have covered this but it is	23	<b>Q. When you say you think it is wrong, why</b>
24	Fed wirable securities and DTC settled securities.	24	<b>do you say that?</b>
25	<b>Q. And then the next is the unencumbered</b>	25	A. I don't think there was -- I don't know
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	212	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	why it says 9/26. Maybe it means Friday 19th.	2	<b>box to refer to?</b>
3	<b>Q. So there were certainly transfers on</b>	3	A. It could be the unencumbered, you know,
4	<b>a Friday and it was either the 19th or the 26th or</b>	4	it is just a sub-total, not even one that looks as
5	<b>maybe both, you don't know?</b>	5	though it was right to me. It looks to me as
6	A. Yes I don't think there were any	6	though there has been double counting in this.
7	transferred on the 26th though.	7	You can see this yourself but the 269 appears
8	<b>Q. What about the Monday transfers? What</b>	8	twice and shows up in the sub-total or in the
9	<b>does that refer to?</b>	9	total. That cannot be right.
10	A. There were some further transfers on I	10	<b>Q. Do you know whether this was corrected?</b>
11	believe -- I think it was on the Monday.	11	A. I don't know. I didn't prepare it. I
12	<b>Q. Saying Monday, are we now talking about</b>	12	don't recall seeing a revised version.
13	<b>the 22nd?</b>	13	<b>Q. What do you understand the total</b>
14	A. Yes, I think so.	14	<b>unencumbered box to refer to?</b>
15	<b>Q. Then there is another line for "Monday</b>	15	A. It was an estimate of the unencumbered
16	<b>transfers par amount". What does that mean.</b>	16	collateral but I am not sure if it was specific to
17	A. I don't know.	17	just DTC.
18	<b>Q. Then for the total unencumbered box it</b>	18	<b>Q. Who would be the person who would know</b>
19	<b>is about 2.6 billion. Do you see that?</b>	19	best what specifically was at DTC and what
20	A. Yes, I see that.	20	transfers were made from the DTC box at any
21	<b>Q. Is that a reference to the clearance box</b>	21	particular date?
22	<b>at DTC?</b>	22	A. Jim Hraska.
23	MR. HUME: Objection, lacks foundation	23	<b>Q. I will show you a document previously</b>
24	A. No, I don't think so.	24	<b>marked as Exhibit 48. If we start with the first</b>
25	<b>Q. What do you understand the unencumbered</b>	25	<b>e-mail chronologically, you are copied on an</b>

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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 214	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 215
2	e-mail from Mr. Lowitt to Mr. McDade and	"We need to launch an effort as soon as possible
3	<b>Mr. Berkenfeld. Do you see the question there:</b>	to ensure we get the 15c3 lock up money and also secure the
4	"Did the court accept the 15c3 lock up and	unencumbered box".
5	unencumbered box make it through to BarCap." Do	<b>He asks you to coordinate with Berkenfeld on that.</b>
6	you see that question?	<b>What did you do?</b>
7	A. I see that, yes.	A. I spoke to Robert Azerad about it. I
8	<b>Q. Did you hear any response or understand</b>	don't recall speaking to -- when I spoke to
9	<b>what the answer to that question was?</b>	Stephen but I am sure I did. He is a lawyer so
10	A. I didn't receive a response.	I presume I am not allowed to discuss what
11	<b>Q. Did you discuss that issue with anybody?</b>	I talked to him about.
12	A. This is not to be facetious but this is	MR. HUME: You are if he want you to.
13	what we have been talking about so I think I have	A. Is that right?
14	discussed it with lots of people over the past	MR. HUME: Yes.
15	year.	A. I am sure I talked to him about what he
16	<b>Q. I am not talking now generally about the</b>	could help with so for me this was sort of largely
17	<b>15c3 lock up or the unencumbered box. I am asking</b>	a legal question.
18	<b>specifically about whether the court accepted --</b>	<b>Q. You respond: "Agreed. Will use Robert</b>
19	A. I didn't speak to anyone about that	<b>for this". Then someone comes back to you and</b>
20	<b>Q. We will mark this as Exhibit 172A.</b>	<b>says:</b>
21	(Exhibit 172A marked for identification)	"You need to be close to it. If we don't succeed
22	The first e-mail is a Saturday e-mail from	you and I are toast, despite all our heroics."
23	<b>Mr. Lowitt to you.</b>	<b>Did you discuss this e-mail with Mr. Lowitt?</b>
24	A. Yes.	A. I didn't.
25	<b>Q. He says:</b>	<b>Q. Did you have an understanding what he</b>
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1	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 216	<b>HIGHLY CONFIDENTIAL - PAOLO TONUCCI</b> 217
2	<b>meant?</b>	MR. HUME: Same objection.
3	A. I did.	A. It is consistent really with what Martin
4	<b>Q. What did he mean?</b>	is saying here. Martin would be more of the
5	A. He meant that in spite of all the work	expert on this than I would, and I would defer to
6	that we had put in this was important to closing	him in terms of what was required.
7	the transaction.	<b>Q. The 15c3, you have explained how there</b>
8	<b>Q. Did you have any further follow-up with</b>	<b>was a billion in cash, there was also 769 in</b>
9	<b>Mr. Lowitt concerning the 15c3 or the unencumbered</b>	<b>securities, and ultimately the agreement was to</b>
10	<b>box?</b>	<b>transfer only the 769 in securities. Is that your</b>
11	A. I am sure I did.	<b>understanding?</b>
12	<b>Q. Do you recall any?</b>	A. That is my understanding
13	A. I don't recall specifics, no.	<b>Q. Do you have any -- did you hear how that</b>
14	<b>Q. We will mark this as Exhibit 173A.</b>	<b>final agreement came about?</b>
15	(Exhibit 173A marked for identification)	MR. HUME: Objection, lacks foundation
16	You testified earlier, sir, that you	and calls for speculation. The witness has said
17	<b>understood that any transfer would be subject, and</b>	he was not a negotiator of the terms of the deal.
18	<b>this is specifically with respect to 15c3, that</b>	A. No, I mean I was not really privy to the
19	<b>any transfer would require regulatory approval?</b>	final decision.
20	A. Yes.	<b>Q. Did anyone ever tell you how that final</b>
21	MR. HUME: Objection, mischaracterizes	<b>decision came about?</b>
22	the testimony He cannot testify as to what was	MR. HUME: Same objection. If the
23	required.	someone was a lawyer then make sure that they are
24	<b>Q. What was your understanding as to what</b>	waiving the privilege.
25	<b>kind of regulatory approval was required?</b>	A. I think if anything it would have been

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	218	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	one of the Weil lawyers that would have told me.		219
3	<b>Q. Did you have any discussions with</b>		MR. BUNTING: As long as we don't get
4	<b>Mr. Lowitt about how the final decision was made?</b>		into an argument about getting time then that is
5	A I don't recall, no.		fine by us
6	MR. HUME: Are you intending to finish		THE WITNESS: My only concern is that we
7	today? You only have three minutes until		don't have another very extended, unnecessarily
8	2 o'clock.		extended session, but I am happy to within reason
9	MR. MAGUIRE: I am not going to finish		of course
10	in three minutes. I think we are going to go		MR. HUME: With the understanding that
11	a bit beyond that. It might actually be feasible		it will not be a full day, it will be something to
12	but definitely not within the next three minutes		accommodate the time, roughly half an hour,
13	or probably the next 30 minutes.		roughly 45 minutes, maybe a little bit more time
14	MR. HUME: Do the Creditors Committee		but not a full day, a couple of hours, I think we
15	still expect to have questions?		can make the commitment, and I believe the witness
16	MR. BUNTING: 45 minutes estimate. I		will be around in London that week, perhaps on the
17	think realistically, if you need to go today,		3rd.
18	rather than try and compress into the time you		THE WITNESS: Yes.
19	don't have an hour and a quarter, on the basis of		MR. HUME: You can check your calendar
20	the commitment that you have made that you be		to confirm 100 percent. We can tentatively plan
21	available at a time approximate to the Claxton		for perhaps the afternoon or the morning of the
22	deposition in London		3rd
23	MR. HUME: That would seem to be		MR. BUNTING: That is good for us.
24	a convenient time for those of us coming over from		MR. MAGUIRE: We may have to make
25	the US		arrangements, not sure I can make it back,
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	220	HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2	substituting, but we will work that out.		221
3	MR. BUNTING: We will probably have the		
4	same arrangement as today with Erica on the phone		
5	and myself in person.		CERTIFICATE OF DEPONENT
6	MR. HUME: So we will agree to leave the		
7	deposition open on that basis.		I, Paolo Tonucci, hereby certify that I have read
8	MR. MAGUIRE: That is fine.		the foregoing pages, numbered 1 through 223, of my
9	MR. TAMBE: Thank you.		deposition of testimony taken in these proceedings
10	(Deposition concluded for the day at 2:00 pm )		on Friday, 14 August 2009, and, with the exception
11			of the changes listed on the next page and/or
12			corrections, if any, find them to be a true and
13			accurate transcription thereof.
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	222	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	223
2	CERTIFICATE OF COURT REPORTER		2		
3			3	E R R A T A	
4	I, AILSA WILLIAMS, an Accredited LiveNote Reporter		4	Deposition of Paolo Tonucci	
5	for TSG Reporting, hereby certify that the		5	Page/Line No.      Description      Reason for	
6	testimony of the witness Paolo Tonucci in the		6	change	
7	foregoing transcript, numbered pages 1 through		7		
8	223, taken on Friday, 14 August 2009 was recorded		8		
9	by me in machine shorthand and was thereafter		9		
10	transcribed by me; and that the foregoing		10		
11	transcript is a true and accurate verbatim record		11		
12	of the said testimony.		12		
13			13		
14			14		
15			15		
16			16		
17	Signed: .....		19		
18	AILSA WILLIAMS		20		
19	Dated: August 14,2009		21		
20			22		
21			23	Signed. .....	
22			24	Name: Paolo Tonucci	
23			25	Date: .....	
24					
25					